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## Human Rights and Cultural Diversity. Core Issues and Cases

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# Review

## ***Human Rights and Cultural Diversity. Core Issues and Cases***

Andrew Fagan. Edinburgh: Edinburgh University Press, 2017.  
248 pp.

Stener Ekern<sup>\*</sup>

As clearly explained on the very first page, this book is about “the troubled relationship between the promotion of human rights and the promotion of cultural diversity.” Its purpose is to discuss (and overcome, I presume) some of the “core areas of anxiety” that this trouble speaks of. Anyone working with human rights, academically or in more applied ways, will be familiar with the anxieties that arise from trying to reconcile individual and collective rights in a consistent and convincing manner. A book holding the promise of taking you one step further towards simultaneously handling the issues of individual moral rights and collectivist cultural rights should attract a wide readership.

As a reader with experiences from teaching human rights as well as applying it in development cooperation, I am pleased to note that Andrew Fagan’s book goes a long way in fulfilling such a promise. But even as his writing is clear, and the argument is both transparent and well ordered, the issues involved are very complex. Following the text requires some familiarity with human rights doctrine as well as with associated debating in philosophy and the social sciences. As a textbook (the editorial has put it in its series

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“textbooks in global justice and human rights”) I believe it belongs to the master level. Indeed, I recognize the book’s “core issues and cases” from numerous discussions at my own university and feel sure that students and colleagues will find the text to be highly relevant and a stimulating read.

Fagan’s main argument focuses on human agency and identity, specifically the ways in which these aspects of our being, as humans, to a large extent are “relational,” i.e., socially constructed and historically contingent, and therefore “cultural” phenomena. In terms of the grand debates between universalistic and relativistic approaches to grounding human rights, as well as essentialist versus constructivist takes on culture, this would appear to place Fagan closer to the relativist and constructivist camps. However, he is equally at ease drawing a firm boundary against a cultural community’s claim to loyalty from its members as in renouncing the idea that human selves can be reduced to the outcome of a series of individual choices. His trick is to focus on “our potential for humanity” as well as our potential for inhumanity. Human rights are an expression of “loyalty with the idea of humanity” (12); herein resides the universal. In so far as humans are group-beings and meaning-producing beings as well as individual agents, promoting human rights must include looking at growth conditions in the cultural communities in which we live as well as on the relations between the individual and whoever governs the community. And even as a “full” life (a life as an identified individual) requires cultural attachment (to be guaranteed through the granting of cultural rights), humans cannot live out just any cultural expression given our potential (perhaps particularly when acting as group beings) for inhumanity.

Here Fagan departs from the ecumenism or relative universalism of, for instance, Rawls (1999) and Nickel (2006) whose projects also aim at combining respect for cultural variation with political liberalism (naïve individualism, as Fagan calls it). Fagan does not allow a reduced list of human rights, for he sees cultural belonging as fundamental to the construction of the human self. On the other hand, if the “culture” we consider denies its members human rights, it will not be able to respond to their aspirations to humanity. As a human undertaking such a community will atrophy, I am tempted to add.

With my anthropological background it is easy for me to be in full agreement with Fagan’s image of human agency as something embedded in culture and, moreover, to identify with his use of quasi-biological metaphors such as referring to “the animating spirit” of human rights to close an argument. There is in human words and deeds always

an element of intention or directionality that tends to disappear in purely analytic exercises. Moreover, I also agree when he argues that promoting human rights (including the rights that a right to cultural diversity necessitates) involve a continuing analysis of how deeply entangled culture is with power and politics. It is from here we might stake out a path to increasing humanity.

As mentioned, the book is well structured. In chapter one Fagan discusses the normative foundations and the contents of his endeavor and introduces his approach to the essentially relational character of agency. He notes the generative capability of human rights as law (its animating force, as it were) and in this he keeps close to the textual and political core of human rights, that is, the actually existing system of International Human Rights Law (IHRL) and its emergence as a response to harmful cultural practices. In chapters two and three he completes his argument and points to how human rights must enable people (precisely because as humans, people are as “collective” as they are “individual”) to contribute to the collective representations of a culture. Moreover, again by keeping the argument close to what IHRL actually says (conventions, declarations, general comments and jurisprudence), he shows that human rights aren’t color-blind as they recognize and protect cultural belonging.

In the remaining chapters Fagan applies his vision in the areas of human rights where cultural sensitivity is most important: women’s rights (chapter four), the rights of minorities (chapter five), the rights of indigenous peoples (chapter five) and religion (chapter seven). Similar to how the whole book is structured, first, a presentation of the theme and some key theoretical issues, and second, a presentation of the relevant rights and the harms they are formulated in response to. Then comes the application of the main theory of “culturally embedded agency” to the issue in focus. I particularly like the way he continually refers to IHRL and real cases, not only because human rights is so much about what happens in the actually existing system of IHRL, but also because this keeps the reader firmly on the path to the spirit of human rights and away from more general discussions about human nature and sociality. (In this way he also shows respect to the continuing work with IHRL all over the world.)

Where I find Fagan’s text to be somewhat less accomplished is the chapter on indigenous peoples’ rights. This goes for the structure as well as the coherence of the argument about the importance of seeing agency and identity as relational. The presentation of facts from the relevant pieces of IHRL is spread throughout the text instead of forming

the sort of intrinsic departure point for the discussion that follows, like he does so elegantly in the preceding chapters. And while I agree wholeheartedly in his programmatic stance that the issue of indigenous peoples poses the greatest challenge for the project of human rights because it “requires reimagining how forms of human life can be collectively organized in ways which fundamentally challenge dominant forms of economic and political rationality” (and thus holds the promise of silencing once and for all the suspicion that human rights are “Western”) (164), I believe he is othering this cultural group far too much when he imagines indigenous peoples as exemplifying a “non-acquisitive and non-materialistic ways of being” (180).

I have worked many years with indigenous people (in Guatemala, Peru, and Paraguay) who definitely can be said to belong to culturally defined collectivities as, for instance, revealed in how people obey and feel animated by a community spirit. However, this does not mean they are less greedy or more spiritual. Granted, the chapter ends with a reference to the silent plight of women in many indigenous communities and the very correct observation that human rights must be extended to all the members of a community. No least by being inspired by the author’s discussion of women’s rights and the feminist critique of the paleness of “contractual man” in previous chapters I see in this detail a golden opportunity to strengthen the argument about promoting loyalty to the idea of humanity also in collectivist representations of indigenous culture.

Here Fagan might have introduced Special Rapporteur James Anaya’s thoughts (2006) about the internal root of sovereignty, i.e., that a polity’s right to autonomy flows as much from its ability to also implement human rights as the external root does by heeding IHRL. Fagan’s focus on the moral limitations of modern constitutionalism which its evolutionary bias represents is interesting, but not satisfying. He is right in being suspicious of classifying societies into more and less advanced, however, as Anaya points out, the Westphalian order is not only the child of mutual recognition and politics between nations, it is also a result of taking what enables living orderly together seriously. The argument that the Indians lived orderly, in a civilized way was what won the day in Spain when the Native Americans were found to be humans. There might be a right to not change, as Fagan suggests, but, paraphrasing his own formulation, the vision of human rights as “inherently transformative” (186) cannot be reserved for cosmopolitans alone.

The last chapter is called “working on a dream?” and here Fagan reformulates his insights and his program in three short and sweet pages. It is impossible for a human rights

scholar not to agree with a vision that “stands opposed to those ways of being and believing which do, in effect, seek to deny the humanity of other human beings and those who follow other ways of leading a humane life” (229). My conclusion is that the chapter’s title is too modest. Believing in a human agency that is infused with potential is more than a dream. It is realism.

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