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A Liberal After All

A Comment on: "From "Honor" to "Dignity": How Should a Liberal State Treat Non-Liberal Cultural Groups?" by Menachem Mautner.

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A Liberal After All

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In *From "Honor" to "Dignity,"*¹ Menachem Mautner argues that the only acceptable way for a liberal state to address the issue of non-liberal cultural groups living in it is to discard, rather than adjust, liberal political theory. Instead of liberalism, Mautner advocates the adoption of universal standards, which transcend liberal theory. More particularly, he offers the doctrine of human rights and the concept of humanness as the standards which the liberal state should use in evaluating the practices of the cultural groups living in it in order to consider whether to intervene in such practices. My main claim in this short comment is that Mautner is a liberal, and that it is a good thing too.

Liberalism is a contested concept. Numerous competing conceptions have attempted to interpret and elaborate its underlying commitments. But it would probably be uncontroversial to use the maxim of equal concern and respect as its most fundamental prescription.² This, at least, is my own understanding of liberalism here.

My comment is divided into two main parts. First, I will claim that notwithstanding Mautner's attempts to distance himself from liberalism, his reconstructive suggestions in Parts II and III of his paper can only be justified in reliance on the liberal maxim of equal concern and respect. Second, I will argue that this should not undermine the validity of these suggestions, because — in contrast to Mautner's contentions in Part I — liberal theory should serve as the litmus test for the legitimacy of non-liberal practices.

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In concluding his discussion of the human rights doctrine, Mautner writes that "we have to think of human beings first and foremost . . . as beings

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1 Menachem Mautner, *From "Honor" to "Dignity": How Should a Liberal State Treat Non-Liberal Cultural Groups?*, 9 THEORETICAL INQUIRIES L. 609 (2008).

2 See RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 180 (1977).

whose shared humanity establishes the claim that they will enjoy human dignity and that they will be treated as bearers of certain fundamental rights that cannot be compromised."³ This sentence nicely captures the liberal credo, and it indeed underlies the international law doctrine of human rights, which "perceives human beings in all places and at all times, no matter what their gender, race or social belonging, as having intrinsic moral value, merely because of their humanity."⁴

Moreover, this liberal maxim, in one version or another, is an indispensable component in justifying quite a few of Mautner's more specific suggestions, at least those which have some teeth. In other words, staunch non-liberals — notably of the religious stripe — who replace the liberal axiom with a theological credo, are bound to reject at least some of these suggestions. Two examples of absolute, cross-cultural injunctions which Mautner rightly recommends stand out in this context: understanding sexuality as a human need,⁵ and recognizing same-sex marriage.⁶

The inevitable reliance on equal concern and respect is also revealed once Mautner's (explicit or implicit) empirical assumptions are relaxed. Thus, Mautner claims that "people around the world, living in many varied societies and cultures, endorse the doctrine [of human rights] and wish its contents to become an important part of the political culture of their country and in their personal lives."⁷ But what if this had actually turned out to be, as a matter of empirical fact, untrue? Would it have made any difference to Mautner? I suspect that it wouldn't have (and rightly so!), just as I assume that Mautner's strong condemnation of honor killings⁸ is not in any way dependant on the contingent popular evaluation of this horrible practice, either within societies which tolerate it or even globally. In other words, although Mautner is at times ambivalent regarding the relative significance of the moral injunction that "we have to treat human beings with respect" on the one hand, and the empirical observation that "an overlap exists between cultures" on the other,⁹ when push comes to shove, he would settle for the former.

In short, Mautner is neither a relativist nor a skeptic nor a nihilist. I read him as a pluralist; as belonging to the tradition of Isaiah Berlin and

3 Mautner, *supra* note 1, at 634.

4 *Id.* at 626.

5 *Id.* at 637-38.

6 *Id.* at 638 n.72. Two other examples that may be relevant here are his commitment to free choice, *id.* at 637-38, and to gender equality, *id.* at 639-42.

7 *Id.* at 629.

8 *Id.* at 637-38.

9 *Id.* at 635.

Joseph Raz, which may be best epitomized in Berlin's memorable phrase: "Forms of life differ. Ends, moral principles, are many. But not infinitely many: they must be within the human horizon."¹⁰ Though Mautner may insist that the universal human common denominator is rather minimal, his moral commitments regarding this minimum are firmly rooted in the very tradition that he tries to repudiate — in liberalism's core maxim of equal concern and respect.

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My happy endorsement of Mautner's liberalism may, however, be quite unwelcome given the first part of his paper, in which he makes a heroic effort to distance himself from the liberal tradition. Mautner is not a proud liberal; but I think that he should be. In my remaining remarks, which criticize Part I of his article, I will explain why.

The main reason for this is already on the table: the only way for Mautner to stick to his universal prescriptions is to endorse the liberal maxim of equal concern and respect. Such an endorsement is called for because, *pace* Mautner, neither the truism that liberal theory is only "one *particular* theory about the good life" nor the contingent fact that members of non-liberal cultural groups may resent its prescriptions¹¹ should *necessarily* condemn its claim to provide the universal common denominator.

Mautner further tries to resist liberal theory by pointing to the many ailments of "mainstream liberal society"¹² on the one hand, and by glorifying the ethics of religious leaders "who devote their lives to reflection on the good life and to educating themselves and other people in the quest for the realization of the ideal of the good life"¹³ on the other hand. Thus he concludes that "the cultures of religious groups enjoy a clear advantage over the culture of the secular, liberal society."¹⁴

I find this conclusion questionable for at least two reasons. Its first problem is that it confuses theory with practice: even if liberal people and their leaders were indeed to be shallow and corrupt while religious people were all to be pious and reflective, no immediate conclusion would necessarily follow to

10 Isaiah Berlin, *The Pursuit of the Ideal*, in *THE CROOKED TIMBER OF HUMANITY: CHAPTERS IN THE HISTORY OF IDEAS* 1, 11 (Henry Hardy ed., 1991). For Raz, see JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986).

11 Mautner, *supra* note 1, at 611-12.

12 *Id.* at 612.

13 *Id.* at 623.

14 *Id.*

the question at hand, namely: the pretension of the liberal *theoretical ideal* of equal concern and respect to cross-cultural validity.¹⁵

The second difficulty with this line of argument is that it sketches what looks like a caricature of reality. Religious life is presented as "'an on-going seminar' of moral education,"¹⁶ while the life of secular, or free, people is pictured as a hedonistic nightmare governed by "marketing and advertisement people."¹⁷ But isn't Mautner guilty here of the outsider's classic tendency to romanticize the other? Does he really believe that his celebration of religious life accurately represents the daily life in Beney Berak (an ultra-Orthodox city in Israel), for example? By the same token, Mautner seems to be guilty of vilifying the predicament of free people: Are we sure that marketing people guided by "the goal of making money" lead this crowd, and not, for example, jurists who "are inevitably teachers in a vital national seminar"¹⁸ and as such are — in Mautner's own view — deserving to play the role of developing universal moral injunctions? Furthermore, does he really think that "the utilitarian-professional ethics of capitalism" stand only for valuing people just "to the extent that they can be useful to other people"?¹⁹ What about the deep humanistic impetus underlying the equal worth that utilitarianism ascribes to the person of the pushpin? And what about the undeniable humanistic qualities of the Protestant Ethics which underlie professionalism: "frugality, economy, moderation, labor, prudence, tranquility, order, and rule"?²⁰

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I thus conclude with a question and a conjecture regarding the answer to it.

The question is whether there is any good reason to shy away from openly celebrating our justified adherence to the liberal maxim of equal concern and respect.

Mautner seems to believe that there is such a reason. As I have tried to

15 This point is made particularly clear where Mautner mentions that members of certain Jewish Orthodox groups enjoy, as a matter of fact, quite a bit of autonomy. *Id.* at 622. Here the liberal ideal serves as the yardstick for evaluating — in this case commending — group practices.

16 Mautner, *supra* note 1, at 623.

17 *Id.* at 623 n.37.

18 *Id.* at 623 n.38 (quoting Eugene V. Rostow, *The Democratic Character of Judicial Review*, 66 HARV. L. REV. 193, 208 (1952)).

19 *Id.* at 624.

20 Martin Diamond, *Ethics and Politics: The American Way*, in *THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC* 75, 99-101 (Robert H. Horwitz ed., 3d ed. 1986).

argue, his critique of liberal theory fails, and his prescriptions inevitably fall back upon the wonderful humanistic achievement of recognizing the equal concern and respect each human being deserves; yet still Mautner persists in distancing himself from liberalism.

My guess is that in doing so he is motivated by a tactical reason: that calling liberalism by another name — such as universal human rights — will make it more politically correct and thus easier for people in non-liberal groups to swallow and identify with. I am not competent to assess the viability of this political concern, and to the extent that it is valid I do not deny a priori the potential value of such an exercise. (What's in a name, anyway?) But I think that a commitment to respect the other should at least invoke an opposite consideration: of frankness even where what we say about the other is not necessarily pleasant to his or her ears.