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# A Long and Broken History of Western “Universalism”: Cosmopolitanism

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## ABSTRACT

With recent developments in political globalization, self-identifying “cosmopolitans” have overwhelmed the scholarly discourse. This article examines the moral claims behind the theory of cosmopolitanism—in its political universal form—while being especially cautious of claims of such *true* universalism, and its likely dangerous applications. This entails a brief analysis into certain justified universalist legal traditions; an example of such is found in the International Criminal Court (ICC). In examining the theory and application of western-originated cosmopolitanism, we not only see how theoretical claims of moral superiority are wrong, but that they are alive and well in western theories. In application, it follows that even (slightly) milder legal traditions, like the ICC, imply this unjustified moral superiority.

**Keywords:** international law, legitimacy, intervention, cosmopolitanism, morality

## 1 Introduction

IN THE 21ST CENTURY, the world has experienced phenomenal heights in global governance. The ICC, United Nations (UN), powers of the Security Council, and treaties that emanated from the UN Declaration of Human Rights all testify to this. However, there is indeed a downside to such an arrangement, one unlike anything we have seen before; a clash of an entire gathering of states with individual state sovereignty, a global, moral status quo, expectations of every nation in terms of having a basic legal structure, market/economic system (capitalism), and even a form of global culture that follows from it.

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We argue that the forms of force and pressure applied to non-conforming states, such as those purported by the ICC and expectation of the global legal status quo — though indeed may have origins in moral claims or generally universal principles — constitute a legal and moral breach of the sovereignty of states, peoples, and individuals everywhere in the world. That is, if the beliefs of equality amongst all individuals holds true, and if we believe that imperialism along with either explicit or implicit imposition of political, legal, and ideological beliefs (which follow from these global developments) onto countries and peoples within them is a morally *wrong* thing, then one must reject any sort of global imposition of governance or moral principles off-hand. We will examine how, without exception, there can be no such thing as imposed global governance that does not imply imperialist and claims of moral superiority. The objective of this paper, as we have stated, is not to look at the quality and efforts of cosmopolitan and similar post-enlightenment theorists' arguments, or at least the substance of each and every one of them. Rather the objective of this paper is to analyze the objectivity of this universal legal tradition, or lack thereof, and see if it is inherently imperialist.

## 2 Eurocentric subjectivity

We know well that the notion of the 'Cosmopolitan' dates back to the ancient greek Stoics, who adopted a cosmopolitan approach, as opposed to the approach of "cosmopolitanism". Sypnowich identifies the schism between the two; whereas the original notion of a 'global citizen' referred to more of a personal belief and situation, a possible guidance of domestic policy and attitude towards others in an open way, the latter refers to the political and legal attempt at putting peoples within a global tradition of morality and legal expectations—something often identified with imperialism.<sup>1</sup> The second, i.e. political cosmopolitanism, emanated and drew from the original understanding, taking its incarnation comprehensively first (arguably) in the form of Immanuel Kant's vision for a global community of states. The whole origin and problem with this notion of universal application, rather than theoretical acceptance of the individual or state (as was the case with the stoics), necessarily implies such international cross-cultural conflict when those of other cultures reject this application.

Kant, taking partial form in his famous *Perpetual Peace*,<sup>2</sup> proposes a comprehensive universal political theory. Specifically, in his hope to achieve perpetual peace amongst nations, entailing the elimination of war and moral, consensus-based cooperation between states, he proposed a series of rules and moral expectations to be followed.<sup>3</sup> Though it has been criticized for its lack of enforceability of the claims, some have read it to eventually pave out a road to a legally enforceable system, and others have adopted it to fit a more 'suitable' form in the modern day.<sup>4</sup>

Whatever be the case, the problem with the approach itself is its blatant lack of, or even respect to attempt to adhere to 'open universalism'—universalism that crosses the bounds of cultures and peoples. Kant, likely limited by the overwhelming presence of the Orientalist, Eurocentric approach to politics present at the time in Europe, kept his view of morality, governance, and law from a western perspective.<sup>5</sup> Even though Kant acknowledged that even the 'savages' of the world could build their civilization and join the league of nations (hence discouraging imperialism),<sup>6</sup> the statement in itself and through its utter lack of appreciation and inclusion of non-European standards is purely subjective from a European point of view. As an example amongst many, when Kant states that "[t]he Civil Constitution in every State shall be

Republican,”<sup>7</sup> or that “[e]very form of Government, in fact, which is not representative, is properly a spurious form of Government or not a form of Government at all...”<sup>8</sup> demonstrates this deficiency.<sup>9</sup>

Interestingly, along some lines of scholarship, this very clear tendency to have a lack of consideration and acknowledgement, this very subjective line of view, is still present. Let us take the example of the late John Rawls, who suggested a Kant-based ideal of a “realistic utopia,” referring to a global organization of states and fundamental moral expectations, more generally an order for the world, as described in his book *The Law of Peoples*, an international application of his *A Theory of Justice*.<sup>10</sup> This ideal global solution builds upon the assumption that liberal democracies, the western ideal of the social contract to be ‘good’, enough to be set as a standard for the world. What he calls ‘decent’ societies may be included in this group of states,<sup>11</sup> while other, so-called “indecent” peoples are not to be included.<sup>12</sup> Many scholars have no problem with the statements, and others have criticized it for being too permissive towards illiberal peoples. Where did Rawls go wrong?

Amongst many problems, one of the problems with his ranking of societies, specifically, his permitting of human rights violators to be dealt with through force, can be found as a version of this applied imperialism. He calls these societies “indecent” and illiberal societies. Furthermore, Rawls states that “burdened” societies are those “whose historical, social and economic circumstances make their achieving a well-ordered regime, whether liberal or decent, difficult if not impossible.”<sup>13</sup> As a response, Rawls recommends an establishment of “appropriate” political and social culture, ensuring that they are capable of rationally handling their affairs.<sup>14</sup>

I do not doubt Rawls’ personally good intentions, but this agenda to *reform* any nonconformist society is unacceptable and paternalistic. Such a blatantly obvious remark, surprisingly, was only captured by John Hobson, who pointed out that Rawls’ theories are another example of Europe’s long-forgotten bias of Eurocentrism.<sup>15</sup> Here, we assert that Rawls exemplifies and endorses the notion of the 19th century *mission civilisatrice*, the title for the French imperialist mission to reform and ‘help’ undeveloped societies. In doing so, Rawls takes a more extreme position relative to Kant’s.<sup>16</sup> It may be argued that Rawls supports multi-lateral, as opposed to unilateral interventions and action towards other ‘peoples’. The problem is that it is still illogical to believe that multilateralism changes or expands the legitimacy of the values upon which the intervention is made to be true. In other words, many countries engaging in unified intervention does not change the imperialist nature of that intervention.

It is important to understand that Rawls does not take liberal cosmopolitanism as his standard, and rejects its foreign policy. However, he still does create a moral hierarchy of societies—arguably, doing this frees Rawls from having to claim true universalism. That being said, we have yet to pinpoint the source of the problem with Rawls’ arguments.

When one identifies that Rawls is ranking societies and deciding their fate, the illogicality from doing so arises from the fact that Rawls cannot prove that *his* hierarchy of societies is derived from an ultimate source of ‘right’ and ‘wrong’. In Rawls’ words, “decent” and “indecent” societies are decent and indecent because of Rawls’ opinion, not due to it being ground in absolute truth.<sup>17</sup> However, Rawls is not making claims to know the absolute truth. One must then

point out how the application of his theory can be *right*, if he cannot prove that the theory is right or universal in any sense. The problem is not Rawls' convincing moral argument—his vision for a realistic, global utopia—but rather his utter subjectivity and myopic<sup>18</sup> outlook. Rawls' lack of questioning the notion of morality, and the effects it clearly takes an imperialist outlook, and his inability to entertain the question of what makes something moral is the problem.

The latter discussion tackles the true universalism in a liberal outlook, for now it is just important to understand that the liberally-derived moral outlook,<sup>19</sup> itself is problematic as it infers a non-justifiable moral inequality.

Skorupski's liberal theory of cosmopolitanism is a milder example of the myopic approach adopted by cosmopolitan interventionists. Favouring intervention on the universality of human rights, saying "human rights are rights whose violation can in principle ground a rectificatory intervention by anyone at all, not just by someone authorized by those whose rights are violated, or by some member of the relevant polity or collective."<sup>20</sup> Clearly, this may be understood as problematic when one does not question the grounds for such rights, whether or not which rights, or rights in general, may be measured on absolute moral grounds—which they cannot absolutely. Hence, suggesting that "the ordinary conception of moral rights is sufficiently settled and stable to underpin this condition, without broaching deeper philosophical questions about the foundation of rights as such,"<sup>21</sup> is flawed in nature. This is because the action or imposition assumes that rights and their enforcement mechanisms are right, and others are not. This implies the existence of a moral high-ground, an imperialistic outlook, to which one may respond: 'who are you to tell me what's right and wrong if we really are all free and equal?' This question, which occasionally perturbs the individual, is never answered. What is important to realize is that the lack of attention of the author to a) universalize a theory of human rights, and b) universalize the application of enforcement for those rights. Although this is beyond the scope of the paper, it is interesting to note that even if human rights theorists have demonstrated universality of fundamental concepts such as the right to life, the enforcement, trial, interpretation, and other mechanisms could never possibly be universalized for the simple fact that every locality of every country has a different legal enforcement system in place.

From a relevant post-colonial, Islamic point of view, Abdullah Ahmed An-Na'im takes it upon himself to convince others to adopt liberal western legal and moral standards. An-Na'im claims that because West, through colonization has already implemented its forms of governance, and that those countries choose to keep the bulk of those things, it logically follows to adopt the same conception of rights and legal framework,<sup>22</sup> to "ensure a minimal degree of practical compliance."<sup>23</sup> Interestingly, this is an even more extreme idea proposed, more than Rawls' treatment with burdened on indecent societies, as it attempts to morally convince the previously colonized population to not adopt their own legal traditions(s). There is no reason why any population should be constrained to western interpretations and applications of laws on the institutions they created, setting the standard. Even amongst the West, no two countries have the same form of law (and hence, same standards) to deal with the argument. It is important to quickly reject this notion of reasoning, but interesting to view the multi-dimensionality of the scholarly discourse. We now turn to identifying the core of this universal argument.

In an essay, Nussbaum reviews the tension between what is dubbed the ‘Communitarian Nietzscheans’ and ‘Universalist Kantians’, stating that the former was “based less on reason and more on communal solidarity, less on principle and more on affiliation, less on optimism for progress than on a sober acknowledgment of human finitude.”<sup>24</sup> This attitude is echoed in McIntyre’s rejection of morality and universality on the terms of separating morality less as an absolute feeling or natural ideology, but an act to justify actions or attitudes.<sup>25</sup> This borderlines Schmitt’s ideological standpoint on seeing liberal ideology as disguised manipulation in the cover of morality. Though it is certainly possible that moral discussion and ideology may be manipulation or imperialism in disguise—which does occur—it is not necessarily true for many universalists and thinkers<sup>26</sup> who are more genuinely trying to create general consensus. This same criticism is applied by Habermas to this opinion, deconstructed for the most part in the latter section. The problem lies, adjacent to the Nietzschean philosophical tradition, with the assumption that morality is universal, and that such universal values can be absolutely measured—we know they cannot.

The objective here is not to make any particular claims about the modern development of international moral norms, it is to identify the very important background and theoretical framework that modern-day theorists have been analyzing the world through. The largely moral perspective displayed from Kant to today has been deconstructed, nailing the issue to the point that follows: there is no dictator of moral values, if all are equal, and all share different moral values, then no matter how much any party claims to be universalist, helpful, generous, etc., they cannot be considered valid on an objective basis. Furthermore, it implies that any such claims of absolute morality and universality, when a strictly western approach is taken, cannot be entertained, and it is important to identify within the scholarly discourse such claims and discard them. From this point, we analyze other, universal claims, their objectivity and validity, with the ICC as a revolving theme. In a modern context, this realization that there is no such thing as absolute morality is found in studies like that of Pahuja’s,<sup>27</sup> where in her detailed political and economic analysis of recent global events, found that neo-imperial and neo-colonial attitudes are present and flourishing in the modern world. The following section rather takes a moral and legal view of how these broad trends are found within the context of international law.

### 3 The Problem with Habermasian ‘Discourse Ethics’

Jürgen Habermas is famous for — among other things — his expounding upon the once-highly popular use of discourse ethics as an endorsement of international law. He applies his logic of discourse ethics from the level of deliberative democracy, to that of an international universal, legal order. In his *Moral Consciousness and Communicative Action*,<sup>28</sup> he makes the specific argument that consent is what forms the validity and ability of enforcement; that is legally justified (on his terms) creates a universal idea. He argues that, put in very simple terms, “only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.”<sup>29</sup> This also implies, as he mentions, that a party that wishes to withdraw its position after it has consented is not legally valid. Once you have entered the contract, you cannot leave it. Leaving does not diminish from the fact that the party agreed to this universal norm—termed the “Universalization Principle”. He thereby uses what is intersubjective, common accepted, to make something ‘right’ or ‘legitimate’. Responding to Carl Schmitt’s criticisms of the politicization of human rights, he dismisses the proposition of

morality dictating the existence of human rights, stating that “[t]he conception of human rights does not have its origins in morality; [but] is...distinctly juridical in character”<sup>30</sup> in an attempt to legally justify such actions. Habermas bases his legal defence of Kant on the two major principles; a) the UDHR obligating all member states to follow, and b) the UN’s own “right of intervention” in the UN Charter.<sup>31</sup> This is grounded in the notion that all individuals in the world have enforceable rights grounded within an international legal process—this is the same tone adopted by Hayden,<sup>32</sup> who claims that the UDHR obligates all governments, justifying the ICC and legal military intervention. It should be noted that Habermas, though not favouring unilateral interventions, still favours the notion of multilateral interventions sanctified by the so-called legal process.<sup>33</sup>

However, there is a major flaw in this sort of argument, which forms a partial basis for our theory. Regarding this position, Thomassen points out that “this begs the question of the rationality of the discursive testing...”<sup>34</sup> — questioning the fact that there is no guarantee of the rationality of such a universal principle made in this way. We modify this objection, concentrating on the fact that there is no guarantee of the “universal” principle being a moral one — let alone a universal standard, for two reasons. Firstly, it is illogical to think that morality and law will always coincide. Famously, Thomas Jefferson once said, “If a law is unjust, a man is not only right to disobey it, he is obligated to do so.”<sup>35</sup> In the case of international law, theoretically, laws are expected to be created on moral grounds—state signatories to agreements reasonably except moral legal structures and laws. One must then ask if it is right to agree, or continue to agree to a convention or a consented law if they don’t consider it right. From this premise, it follows that a state, whether due to a change in outlook or in regime, would logically be morally obliged to revoke international obligations without pending enforcement.

Secondly, and more to the point, there is absolutely no guarantee that this consensus could be an absolute moral standard. Our colleagues have recently attempted to answer the question, “what is true?” We conclude that in order for something to be valid as a fundamental, human standard, it must pass very basic logical conditions. Thus, it must have a true origin, and its essence cannot change through time, space, or perception,<sup>36</sup> i.e. something that is true cannot not be not-true through time—even if an observation is no longer such (the substance changes), the explanation/principle governing the explanation of this change/observation does not change (the form). Here that we are talking about a standard for humanity, not some impermanent legal structure: something universal, like human rights. If, for instance, a group of people got together and decided there was no right to life, and another decided there was one; assuming both are true assumes that the value of human life is subject to peoples’ beliefs; this is not consistent with basic tenets of logic. Even if we only include the second criterion (absoluteness), it is illogical to for this universal standard to be a product of certain individuals’ opinions at a certain point in time. Habermas’ theory operates external to a logical ranking of true and false — which we happen to agree with. Habermas’ undetected but biggest error is that he conflates our knowledge in the present moment with knowledge of the Truth (deliberately capitalized).

But this discussion reaches a dead end, and cannot be taken on the merits of logic, belief, or another criteria. It is possible that a “universal” standard — “universal” according to Habermas — applying to human beings or states is not morally justifiable, and that the morally right thing to do is contrary to the deliberation following Habermas’ procedure. It is precisely because we

do not know what morality is that we cannot penalize somebody — say, a *defector* from Habermas’ contract — for doing something that is in their view moral. Anybody — like Habermas or anybody else — can advance theories; but our inability to know if an advanced theory is really legitimate leads us to not justify enforcing our theories of morality onto others’.

This leads to the point we want to make on the higher plane regarding methodology. In Habermas’ opinion, right and wrong (morality) is dictated by the process of universalization he proposes. We disagree. But this is beyond the larger point, namely: that we may never know whether something is ultimately or always inherently “good” or “bad”. If a state were to at one point agree with Habermas (*viz.*, that something is right by consent), and consented to a principle, and then, on grounds of believing in a different view of morality, withdrew from the principle as previously agreed (say, on religious grounds), it would be a moral imposition to penalize the withdrawing party. For instance, Iran agreed with the morality of the UDHR, and consented to it, implicitly based in the belief of Habermas’ system of legitimization. After the Iranian revolution, the country revoked its association with the UDHR due to so-called un-Islamic values in the document.<sup>37</sup> If, say, the UDHR itself contained a clause permitting penalization for revocation, it would be a moral imposition to carry it out, as Iran considered itself—based on a different worldview—morally obliged to revoke association with the UDHR. Hence, we have morality vs. morality, and any opposition from either side would be exactly that: an imposition

#### 4 International law and cosmopolitanism

We begin with discussing the attempt for some to approach human rights from a legal perspective, then shifting specifically towards the case of the ICC, the main theme being the discussion of imperialism and western subjectivity. Perhaps the most provocative Kant-aligned arguments in favour of justifying international legal traditions is that of Habermas. Off the bat, we see that the attitude clearly demonstrates an appreciation of Kant’s ideal of the world; planning out a global economic, political and legal, tradition, and a form of laws/guiding principles to be applied on all people and nations. For instance, she supports Kant’s dictation of principles like freedom of speech/public forum to stop countries from justifying acts without consciencious consensus;<sup>38</sup> or encouragement of liberal political culture for the purpose of “civilizing” the people of the world<sup>39</sup>. He not once questions the validity of such claims—or that it is possible that such claims may not be valid. Rather, she expands this unjustified theoretical formulation to invade the sovereignty of every individual and state (arguably beyond what Kant himself intended).

The more provocative portion, however, is the legalization of cosmopolitan-like universalist laws. Habermas, in reply to Carl Schmitt’s criticisms of the politicization of human rights the dismisses of the assumption that “that the politics of human rights serves to implement norms that are a part of universalistic morality”. He states that “[t]he conception of human rights does not have its origins in morality; rather, it bears the imprint of the modern concept of individual liberties and is therefore distinctly juridical in character,”<sup>40</sup> attempting to legally justify such actions taking a tangent.

Instead of taking a moral position, Habermas inserts the notion of legality that enforces rights, a notion that “outstripped Kant.”<sup>41</sup> Habermas bases his legal defence of Kant on the two major principles; a) the Universal Declaration of Human Rights (UDHR), obligating all member states to follow, and b) the UN’s own “right of intervention” in the UN Charter,<sup>42</sup> being legally justified. This is grounded in the notion that all individuals in the world have enforceable rights grounded within an international legal process. This is the same, clearer tone adopted by Hayden,<sup>43</sup> who claims in review that the UDHR obligates all governments as such, providing the ICC and justifying legal military intervention. It should be noted that Habermas, though not favouring unilateral interventions, still favours the notion of multilateral interventions sanctified by the so-called legal process.<sup>44</sup> Before engaging in a response, it should be understood that although the scholarly discourse has situated itself in a pro/against unilateral interventionist scale<sup>45</sup>, we take the stance of the entire notion of intervention, regardless of ‘consensus’ or multilaterality. In response to this line of thought, those stretching beyond the mere morality, we suggest two responses.

Firstly, there is the legal argument. Wall leads a powerful argument against the theory and enforceability of the UDHR. On the theoretical component, he made it clear that the document itself did not constitute an authoritative document, but “a statement” upon which to build further treaties,<sup>46</sup> but the documents and the UDHR itself do not provide for a form of enforcement,<sup>47</sup> which of course ends up being undertaken by countries like the US, and itself also lacks interpretive authority, or even if interpretation is to extend beyond the individual state’s own interpretive mechanisms.<sup>48</sup> Such lack of discrepancy has several effects that all found itself within the notion of arbitrary interpretation and implementation,<sup>49</sup> and arbitrary, suppressive enforcement of the United States upon other nations that it deems to be,<sup>50</sup> and the imposition of western/global human rights values over other human rights values (like Indian and Islamic ones),<sup>51</sup> emanating from the fact that there is no such thing as a singly interpretable set of ‘human rights’, which finds itself as diverse as there are cultures. He dedicates the rest of the article to examining the arbitrariness of this enforcement in the case of the United States. To Habermas, it is interesting to observe that the US itself is not bound by the rules it implements—the UN therefore cannot be accepted as any sort of bearer of human rights or legal standard, and therefore cannot have legal validity itself-being non-enforceable.

The second response takes a more logical outlook. As quoted above Jefferson stated that “If a law is unjust, a man is not only right to disobey it, he is obligated to do so.”<sup>52</sup> In the case of international law, theoretically, laws are expected to be created on moral grounds—state signatories to agreements reasonably except moral legal structures and laws. One must then ask if it is right to agree, or continue to agree, to a convention or a law brought by a consented-upon legal arrangement if they don’t consider it right. Our intention is not to say that laws have no moral meaning, nor do we want to engage in such a discussion. However, it is rather peculiar that certain people apply legality to be more valuable than morality when it fits their agendas—as some supporters of international legal standards claim. We simply assert that it is the same group of scholars who would want an enforceable legal standard to be created in the name of morality. If that is the case, it would be a double-standard to claim that law takes precedence over morality (to prevent moral injustice the previous legal system applies). From this premise, it follows that a state, either do to a change in outlook or in regime, would logically have the right to revoke international obligations without pending enforcement (which, interestingly, does not even exist



in the first place). It is from the moral backdrop that further discussion will ensue; the case of the ICC.

The ICC is a treaty-based criminal court, providing ‘objective’ criminal tribunals and holding committers of certain crimes to account through this court. That being said, the ICC gives itself jurisdictional authority to all people, even non-parties to the agreement, and non-state actors. Such people may be captured, tried and punished accordingly. Akande states that in legal terms, such authority is allowed, as non-party actors/states are neither obligated, or required to refrain from any terms—that fact that a state’s interests (especially American) may be affected does not qualify as an imposition.<sup>53</sup> The ICC states that it has jurisdiction over even non-consenting parties if approved by the UN Security Council,<sup>54</sup> or when “the “conduct in question” took place on the territory of a state party, or on one of its flag vessels or aircraft, regardless of the accused's nationality.”<sup>55</sup>

There are two important observations to make about this argument; one about the legality, and the other on the ICC’s general structure. Firstly, the suggestion that any authority simply has the right to subject legal, non-consenting citizens to another form of law is simply not justified. Casey and Rivkin point out the blatantly obvious: the fact that the Rome Statute imposes its jurisdiction upon any nation and rule of law in the world violates the fundamental understanding that all states are sovereign and equal in their legal sovereignty<sup>56</sup>—even the claimed proposition of an arrest warrant without consent is ridiculous. This logic also derives from the fact that all individuals are equal, providing that all individuals can have a logical foothold for this claim—the logic that all individuals are equal ideologically and that no person can rightfully or with absolute proof that they are morally superior; hence applying not just to states but all others as well. “By asserting power over the civilian and military officials of non-party states, the Rome Statute clearly violates the sovereign equality of those countries as guaranteed by international law.”<sup>57</sup>

Furthermore, we would take this a step further, invoking the above discussion on “legality” vs. “morality”. As previously stated, because legal grounds do not imply moral grounds, even in a case where a signatory to the Rome Statute, or a member of the UN (subject to the jurisdiction of the UN Security Council) could simply revoke its agreement; theoretically (morally) and enforceability-wise, no institutional body can claim right over another, no individual over another. It follows that a country like Iran (as it has) that revoked its association with the UDHR due to unIslamic values formulated within it,<sup>58</sup> is certainly morally permitted to do so. When law is based on morality, and it cannot be defined, then laws—which themselves carry not enforcer—can be revoked. Similarly, even non-state parties that don’t consent cannot be captured, or subject to any such jurisdiction. This gradual and general process, which is ultimately a question of morality in everyone’s eyes (whether making or not making law), of justifying war and gradual attempts to fit the world under a certain jurisdiction, is not morally justified, and bares just as much legitimacy as any form of imperialism does.

## 5 The final hope: multicultural universalism?

Even from a western (more-or-less) liberal orientation, Rawls, Nussbaum, Pogge, and other diverging advocates for global governance have managed to vie for a final gasp of

argumentation, the groundbreaking claim that the nature of liberalism — its taking into consideration and a formulation of all peoples' concerns — is not imperialistic, but the ultimate way to peacefully coexist. In other words, liberalism can be justifiably enforced because it is truly universal and pluralistic. Ralph best summarizes liberal cosmopolitanism as “a political stance that is committed to nothing more than the defence of institutions that enable the expression of diverse opinions and of the defence of values that emerge from a reasoned dialogue across those opinions.”<sup>59</sup> The claim then could be made that liberal cosmopolitanism, such as that found in the form of the ICC is not imperialistic because it inherently takes all legal traditions and cultures into consideration.

Ralph, again, looks at the case of the ICC in order to prove such a point. Though we have our reservations towards the validity of the liberal argument which are discussed in the end, it is important to review the ICC case. Ralph claims three points: that (a) nearly all civilizations have the basic expectation of morality and rights accepted by the west, (b) there is an unbiased, independent judiciary, and (c) the ICC itself does not encourage violent intervention—akin to the 2003 American-Iraq war<sup>60</sup> (which he clearly opposes, titling such ideology as “Wilsonian” that differentiates between an ultimate subjective understanding of ‘good’ and ‘bad’). Regarding point (a) there is no doubting that there is more or less a non-western, global consensus, as found in declarations like the UDHR. Despite this, however, though global governance is not a solely western agenda, it is still *an* agenda nonetheless, and still assumes the same moral superiority over others. Furthermore, we dispute this point by highlighting that the ICC's efforts and principles are of western origin,<sup>61</sup> even if certain states (which have obviously been influenced by west ideology) agree to these western standards. Agreeing to western standards does not change the fact that it is a western-imposed — in the sense of imposing it on non-consenters — from an objective point of view. Obo and Ekpe<sup>62</sup> note that it does not reduce the case-by-case arbitrariness of prosecution and other clear western, practical, power-based influences on the ICC.

This takes us to the second point, how truly independent is the ICC from the western powers? Though we will not examine the detailed case-by-case theories the above scholars and others elaborated on, we point out that the so-called universality of the legal traditions is not as it seems. In the former section, we saw how divergent the interpretation and diversity of even amongst basic “human rights” can be. Some, like Vice President of the International Court of Justice, Abdulqawi Yusuf,<sup>63</sup> believe that “the positive outlook on the endurance of the diversity of legal traditions is justified.” He states this backed by the fact that many regional traditions form converge and form international law. He gives the example of the Rome Statute's provision for the existence of “dissenting opinions”<sup>64</sup> amongst judges, opinions that come from a variety of legal backgrounds.

There is a major flaw in this moral argument. It assumes that there is a reasonable amount of diversity amongst judges, that when a panel is more diverse, a lack of cross-cultural understanding is made up for. This is unfortunately not the case; after looking within domestic law of a given country, especially in places where tribal, ethnic, and cultural differences and norms are very different even within the country (let alone from the west), it becomes unreasonably hopeful to believe that such deep-rooted, historical, non-generic, isolated cultural legal traditions can be fully—or even sufficiently—understood by judges with much less

experience and understanding. It is also comical to attempt to give legitimacy to interpreting, say, African cases, due to the fact that one amongst the panel of judges was born in Africa. It is blindly naïve to assume that an “African judge” can possibly represent and understand all of the legal traditions and cultures within Africa. Another flaw in the ICC argument that Ralph (among others) makes is that it is impossible to incorporate and interpret law for countries and cultures wherein the possessors of the culture reject outsiders interpretations.

As an example, certain Muslim countries specifically state, in their constitutions, that any non-divinely-originated law may not be implemented and interpreted, and that those laws and their interpretations must be made by Muslim legal scholars from within the respective countries. Any notion of governance beyond the Islamic Shari’ah interpretation that the state may have goes against the institution and therefore state: countries like Saudi Arabia, Bahrain, Kuwait, Oman, and Yemen, Iran, and Sudan.<sup>65</sup> Knowing this makes it unlikely that “subject[ing] citizens of an Islamic state to secular international laws, which gives the ICC jurisdictional power...goes directly against the Islamic faith.”<sup>66</sup> This has been perilously reviewed and confirmed in much more detail by other studies.<sup>67</sup> Therefore, it cannot be said that the ICC incorporates all forms of law, and inherently assumes that its laws and punishments are standardized and true and apply to all. It cannot guarantee a completely understandable and objective analysis, or deal with the fact that some forms of law rejecting others’ interpretations implies that any imposition on it would be as such.

The third point that Ralph makes was refuted by Jürgen Habermas<sup>68</sup> as a refutation to Carl Schmitt’s claim that liberal humanitarians would eventually treat their illiberal opponents in the same inhumane manner the same illiberal treated others. This particular point does not have anything to do with the question of moral legitimacy at hand; the question of the morality of global governance is a matter of principle, *viz.* whether or not the ICC and related organizations are operating in a principally imperialistic manner.

All in all, even the liberal attempt to shift the focus from the ICC being a ‘western’ imposition, towards being a western-originated and more globally-accept imposition, does not change the fact that the internationalist position takes a moral high-ground. The scholarly communitarian discourse criticizing this moral high-ground has failed to make a comprehensive defence of their criticism of morality, due to the fact that they believe morality is ultimately too subjective to be objective. They are caught up into a debate on whether or not institutions like the ICC are as diverse and open-minded as they say they are, instead of recognizing the larger picture. The picture being that it does not matter whether or not such institutions are western or global—it is still an imposition implying moral superiority.

## 6 Conclusion

In our brief overview of the several stances on global governance, there are a few definitive points that can be made. Firstly, we reviewed the one-sided, subjective understandings of global governance proposed by Kant, that Rawls has taken inspiration from. Those who advocate for measures for global governments from a Rawlsian perspective imply a worldview from a Eurocentric outlook, and an explicit ranking of “good” and “bad” societies based on this outlook. Secondly, in review of legal, rather than moral responses in favour of legal governance, we

responded with both a legal and logical argument disproving moral validity of the theories backed by discourse ethics. Finally, we reviewed certain scholars' attempts to demonstrate how the ICC, in particular, was not a case of unilateral, imposed intervention, but a case of collective reasoning and agreements—the typical liberal cosmopolitan apologetic line of argumentation.

The reply to the final point, and the point of this article, was to say that in a world with so much cultural, religious, and ethnic diversity, interpretive understandings, and moral views of governments' obligations and views on their jurisdiction, that any attempt to impose any sort of imperative, is morally, and legally not justified. It is not legally justified as it is not morally justified. In such a case, then, any form of non-consenting, multi or uni-lateral action, intervention, or attempt to impose governance on others, necessarily implies an amorally justified action, whether it is the ICC, international enforcement of the UDHR (or related documents), or unilateral intervention. Finally, the point should be made that this article hopes not to provide for a basis of extreme pessimism, nihilism, or opposition to the creation of a standard. It simply dismisses the notion of the possibility to create a global legal tradition *based on a world where there are no set standards*. Unless it is possible to develop a model of justice that can claim absolute truth—which is impossible to assert—,<sup>69</sup> justice in the eyes of one can be oppression and suppression in the eyes of another.

## Acknowledgements

We thank Professor Rafiqul Islam, our colleague, and Professor Florian Bail for very valuable ideological contributions and reviews of the manuscript.

## Notes

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<sup>1</sup> Christine Synowich, "Cosmopolitans, cosmopolitanism, and human flourishing," in *The Political Philosophy of Cosmopolitanism*, edited by Gillian Brock and Harry Brighouse (Cambridge: Cambridge University Press, 2005), 57.

<sup>2</sup> Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (Syracuse: Syracuse University Humanities Center, [1795] 2010).

<sup>3</sup> Pauline Kleingeld and Eric Brown, "Cosmopolitanism," in *Stanford Encyclopaedia of Philosophy*, edited by Edward N. Zalta (Stanford University, 2002). <http://plato.stanford.edu/entries/cosmopolitanism/>; Ibid.

<sup>4</sup> Pauline Kleingeld and Eric Brown, "Cosmopolitanism."

<sup>5</sup> Edward Said, *Orientalism* (London: Penguin Books, 2006), 119.

<sup>6</sup> Kant, *Perpetual Peace*, 21.

<sup>7</sup> Ibid., 13.

<sup>8</sup> Ibid., 15.

<sup>9</sup> Jurgen Habermas, "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight," in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Matthias Lutz-Bachmann (Cambridge: The MIT Press, 1997), 117.

<sup>10</sup> John Rawls, *The Law of Peoples: With the Idea of Public Reason Revisited* (Cambridge, MA: Harvard University Press, 2001).

<sup>11</sup> For Rawls, "decent" refers to states that are able to live up to fundamental human rights and moral expectations but are not liberal democratic countries.

<sup>12</sup> Ibid., 60-64.

<sup>13</sup> Ibid., 96.

<sup>14</sup> Ibid., §15.

<sup>15</sup> John Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760-2010* (Cambridge: Cambridge University Press, 2012), 286-306.

<sup>16</sup> Whereas Kant rejected the notion, he ranked the ‘civility’ of societies. Rawls takes it further by declaring there to be a moral responsibility to ‘help’ ‘burdened societies’ that have not yet been civilized.

<sup>17</sup> Rawls, *The Law of Peoples*, §11.

<sup>18</sup> Economists Zatzman and Islam (2007, 116) criticized those unable to view things from an ultimate, ‘gods-eye-view’ perspective from a statistical-trend-based point of view. For Rawls, his lack of questioning the notion of morality, or at least the possible effects of not doing so, is subjective and lacks general, non-myopic outlook.

<sup>19</sup> Sanja Ivic, “Rawls’s Law of Moral Peoples,” *Journal of Humanities and Social Sciences* 1 (2007): 5.

<sup>20</sup> John Skorupski, “Human Rights,” in *The Philosophy of International Law*, edited by John Tasioulas and Samantha Besson (Oxford: Oxford University Press, 2010): 370.

<sup>21</sup> *Ibid.*, 373.

<sup>22</sup> In the latter section, we look at uninterpretability and bias amongst western standards themselves, shedding further light on the notion of “western” standards themselves.

<sup>23</sup> Abdullahi Ahmed An-Na’im, *Islam and the Secular State: Renegotiating the Future of Shari’a* (Cambridge: Harvard University Press, 2008), 19.

<sup>24</sup> Martha Nussbaum, “Kant and Cosmopolitanism,” in *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal*, edited by James Bohman and Matthias Lutz-Bachmann (Cambridge: The MIT Press, 1997): 25.

<sup>25</sup> Alasdair MacIntyre, *After Virtue: a Study in Moral Theory*, 3rd ed (Notre Dame: University of Notre Dame Press, 2007), ch. 5.

<sup>26</sup> If we debate the intentions of the recent universalistic phenomena and even the scholars propelling the notion, we fall into the trap of debating whether or not Kant or his contemporaries, for instance, were a product of limitation and what not.

<sup>27</sup> Sundhya Pahuja, *Decolonising International Law. Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011).

<sup>28</sup> Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: MIT Press, 1990), 55

<sup>29</sup> *Ibid.*, 197.

<sup>30</sup> *Ibid.*, 137.

<sup>31</sup> *Ibid.*, 131.

<sup>32</sup> Patrick Hayden, “Cosmopolitanism and the Need for Transnational Criminal Justice: The Case of the International Criminal Court,” *Theoria: A Journal of Social and Political Theory* 104 (2004): 69-95.

<sup>33</sup> Jürgen Habermas, “Interpreting the Fall of a Monument,” *Constellations* 10 (2003): 364 -370.

<sup>34</sup> Lasse Thomassen, *Deconstructing Habermas* (London: Routledge, 2012), 38.

<sup>35</sup> Marc Brasof, *Student Voice and School Governance: Distributing Leadership to Youth and Adults* (London: Routledge, 2015), 89.

<sup>36</sup> MR Islam, Jaan Islam, GM Zatzman, *The Greening of Pharmaceutical Engineering, Volume 2, Theories and Solutions* (New York: Wiley—Scrivener, 2016). Specifically; if something is true, it cannot no-longer be true. Even if a physical substance, for instance, may change, but the fact that it was something at that time cannot change. But even if it can be argued rights are time-dependent, it does not change the fact that this is the belief of an individual who does not hold superior moral grounds over someone who believes rights exist through time and space

<sup>37</sup> David Littman, “Human Rights in Islam,” *Midstream* February/March (1999), quotes Said Rajaie-Khorassan’s statement, the Iranian representative to the United Nations: “The Universal Declaration of Human Rights, which represented a secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions.”

<sup>38</sup> Habermas, “Kant’s Idea of Perpetual Peace, with the Benefit of Two Hundred Years’ Hindsight,” 123.

<sup>39</sup> *Ibid.*, 125.

<sup>40</sup> *Ibid.*, 137.

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<sup>41</sup> Ibid., 129.

<sup>42</sup> Ibid., 131.

<sup>43</sup> Patrick Hayden, "Cosmopolitanism and the Need for Transnational Criminal Justice: The Case of the International Criminal Court," *Theoria: A Journal of Social and Political Theory* 104 (2004): 69-95.

<sup>44</sup> Jurgen Habermas, "Interpreting the Fall of a Monument," *Constellations* 10 (2003): 364 -370.

<sup>45</sup> Even scholars such as Christopher Wall, who are staunch advocates against unilateral intervention and American hegemony, (cited above) support multilateral interventional arrangements.

<sup>46</sup> Christopher Wall, "Human Rights and Economic Sanctions: The New Imperialism," *Fordham International Law Journal* 22 (1998): 579.

<sup>47</sup> Habermas admitted to the lack of an army on behalf of the UN (Habermas 1997, 127).

<sup>48</sup> Ibid., 581-582.

<sup>49</sup> Ibid., 583-588.

<sup>50</sup> Ibid., 588-589.

<sup>51</sup> Ibid., 590: India's culture and human rights' interpretory frameworks are vastly different from that found elsewhere in the world—a major problem with "international" as opposed to national or communal law is the ability to fully understand and realize the circumstances of each particular case.

<sup>52</sup> Marc Brasof, *Student Voice and School Governance: Distributing Leadership to Youth and Adults* (London: Routledge, 2015), 89.

<sup>53</sup> Dapo Akande, "The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits," *Journal of International Criminal Justice* 1 (2003): 620.

<sup>54</sup> International Criminal Court, "Understanding the International Criminal Court." ICC (n.d), <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>, 4.

<sup>55</sup> Lee A Casey and David B. Rivkin, Jr, "The Limits of Legitimacy: The Rome Statute's Unlawful Application to Non-State Parties," *Virginia Journal of International Law* 44 (2003): 72.

<sup>56</sup> Ibid., 64.

<sup>57</sup> Ibid., 73.

<sup>58</sup> Littman (1999) quotes Said Rajaie-Khorassan's statement, the Iranian representative to the United Nations: "The Universal Declaration of Human Rights, which represented a secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions."

<sup>59</sup> Jason Ralph, "Which Cosmopolitanism? Whose Empire? Or Why the Schmittian Charge of 'Liberal Imperialism' is Only Half Right," *Global Society* 23 (2009): 216.

<sup>60</sup> Ibid., 217-220.

<sup>61</sup> Ugumanim Basse Obo and Dickson Ekpe, "Africa and the international criminal court: A case of imperialism by another name," *International Journal of Development and Sustainability* 3 (2014): 2025-2036.

<sup>62</sup> Ibid., 2034. They are sure not to forget that the ICC itself, as an institution, has been controlled/highly influenced by western traditions, some of which Africans under colonialism reject—those that involve more local and cultural traditions that people wanted to reemphasize in a post-colonial world. This is precisely the lack of outlook An-Na'im has; who seems to be suggesting that because certain western institutions and traditions stayed with the countries in the post-colonial period, that they are only restricted to taking the west as a standard.

<sup>63</sup> Abdulqawi Yusuf, "Diversity of Legal Traditions and International Law: Keynote Address," *Cambridge Journal of International and Comparative Law* 2 (2013): 703.

<sup>64</sup> Ibid., 699.

<sup>65</sup> Emilia Justyna Powell and Sara McLaughlin Mitchell, "The Creation and Expansion of the International Criminal Court: A Legal Explanation," in *The Midwest Political Science Association Conference*, Chicago, April 3-6 2008, 15.

<sup>66</sup> Ibid., 16.

<sup>67</sup> Jaan Islam, *True Islam, Jihad, and Terrorism: a Discussion on Political Islam* (New York City: Nova Publishers, forthcoming), ch. 3.

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- <sup>68</sup> Habermas, “Kant’s Idea of Perpetual Peace, with the Benefit of Two Hundred Years’ Hindsight,” 128-131.  
<sup>69</sup> Impossible, given the fact that—at least in western political theory—there has been no such claim.