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The Redemptive Principle of Particularistic Obligations

A Legal Political Inquiry[1]

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Are Particularistic Obligations Essential?

Particularistic obligations are social duties of individuals towards their community. They are particularistic because they stand in complementary or contradictory ways to the obligations of individuals towards their nation-state and the international system. By definition particularistic obligations are communal at the local and the transnational level. Why should we deal with that notion? Is it not sufficiently democratic to exclusively look into universal and national obligations, while looking after a Kantian collective moral good? In other words, who needs a platform of particularistic obligations? Amitai Etzioni's invigorating essay invites that debate and offers a communitarian solution.

A communitarian examination of particularistic obligations is an important project, especially after the demolition of some totalistic secular ideologies, the emergence of a cultural warfare between liberalism and some segments of Islam, and particularly

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facing the inability to argue for any concrete culture that may be endorsed in all localities, as a global transnational culture. But the failure to globalize one local culture, including the failure to globalize only the liberal culture, and the absence of a localized global culture, are only one reason to look into communitarian arguments of particularistic obligations.[2]

A second reason is that in a period in which the nation-state is dysfunctional to many of our democratic expectations of justice, and while social equality is an unfulfilled remote dream, communities are crucial as sources of support, empowerment and struggles for equality. Accordingly, communities are not merely symptoms of multiculturalism, but they are constitutive settings of it and sources of generation of plurality. They generate and empower multiplicity of identities and their practices. Hence, as Amitai Etzioni argues, to negate particularistic obligations would be to severely damage our abilities to practice our own embedded identities. Moreover, recognition of these obligations is required for cultural legitimacy for minorities in a possibly unreceptive world.[3] The argument for particularistic obligations is rooted in the communitarian scholarship and is strengthen by contemporary post September 11, 2001, international events that demonstrated to what degree humanity cannot globalize one desirable culture.

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[2] I am using the concept of globalization of the local, and localization of the global, as developed in Boaventura de Sousa Santos, ***Towards a New Common Sense: Law, Science, and Politics in Paradigmatic Transition***. New York: Routledge, 1995.

[3] For a somewhat similar argument, not necessarily communitarian, see: Amy Gutmann, ***Identity in Democracy***. Princeton: Princeton University Press, 2003.

Minorities as Sociopolitical Carriers

A debate on particularistic obligations goes further, however, raising strong arguments for the importance of non-ruling communities—the carriers of particularistic obligations-- in the constitution of our life. In his essay Etzioni raises, as I see it, three types of such principal arguments. First, an ontological claim that conceives life as meaningful if it is a component in a more communal constitutive context. Whatever one thinks, feels, and practices is meaningless, namely-completely transcendent to one's life, unless it is contextualized in a specific community. Second, a theoretical assertion that builds on sociological studies, which prove the necessity of communities for social capital.[4] Hence, one's ability to enjoy and provide social services significantly depends on the existence of a community that empowers and maintains these services. Third, a normative argument that refers to the contribution of communities to a just society. Accordingly, communities are social agents of better moral ecology since without them human beings will be completely egoistic atoms, and aloof from their social surroundings.

These three fundamental arguments that are derived from the communitarian tradition[5], and further constructed by Etzioni in the context of particularistic

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[4] For a similar argument from a liberal perspective, see, Robert D. Putnam, ***Bowling Alone: The Collapse and Revival of American Community***. New York: Simon and Schuster, 2000.

[5] For a systematic overview of the communitarian tradition, see: Gad Barzilai***, Communities and Law: Politics and Cultures of Legal Identities***. Ann Arbor: University of Michigan Press, 2003; Amitai Etzioni, ***New Communitarian Thinking: Persons, Virtues, Institutions, and Communities.*** Charlottesville: University Press of Virginia, 1995; Philip Selznick, ***The Moral Commonwealth:***

obligations, do not refer to power relations in contemporary multicultural societies. They do presume that communities are liberal, at least to some degree, and enjoy some access to political power. Hence, I argue for a fourth claim that points to the legal- political value of a communitarian approach that advocates particularistic obligations. Such a fourth argument makes Etzioni's paradigm more related to diversity of non-ruling communities, which are not necessarily liberal, in a hazardous world. Referring to cultural, ethnic, religious, and national minorities that are not necessarily liberal makes the case for communitarians harder, but it proves the importance of the communitarian approach along the problematizations that it offers.

Let us assume a liberal community that expects to receive a large donation from one of its members, under the argument that the donor should prefer the specific communal needs over the expectations of the general public for a financial philanthropic assistance. Etzioni justly justifies donation to one's community even if it diminishes one's financial assistance to the general public. Such instances that are rather common among religious congregations, I argue, are crucial but rather easy cases for communitarians to discuss.

What if the community- be it any kind of minority- is non- liberal and the (particularistic) obligations that it is imposing on its individuals may oppose and even contradict liberal obligations? I agree with Etzioni that communities should not be excessive in a way that makes them regimes of dictatorship. But surely not all non-

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Social Theory and the Promise of Community. Berkeley: University of California Press, 1992; Charles Taylor, ***Sources of the Self: The Making of Modern Identity***. Cambridge: Harvard University Press, 1989.

liberal communities are in that undesirable category. As I explore elsewhere[6], 'freedom of choice' as liberals incline to imagine and largely fantasize, is only one type of individual freedom, since individuals in non-liberal communities, who are embedded in a different culture, do have significant personal autonomy and they enjoy social support even in more significant ways than liberalism may ensure to its adherents. Often, in non-liberal communities the freedom exists, but the choices are different than in liberal settings due to the different culture. In other words, 'freedom of choice' is by itself a matter of choice, because of cultural relativism. Therefore it is utterly problematic and undemocratic to exclude particularistic obligations in non-liberal minorities solely based on a relative criterion as 'freedom of choice'.

Even if a certain collision between liberal values and communal non-liberal values exists, still non-liberal particularistic obligations do have a lot of meaning in order to sustain a democratic justice. Let us take a religious minority that is having unified clothing as an integral part of its culture and for the sake of preserving that culture. Should we prefer from a democratic perspective that cultural collective dictum on the liberal freedom of each member in the community to choose otherwise? A communitarian argument should claim that for the sake of empowerment of non-liberal minorities in a multicultural setting, we indeed should prefer that particularistic obligation of each member in the community to respect the dictum of unified clothing. I do presume in my example that most members of the community would like to have unified clothing that is part of their collective identity.

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[6] Gad Barzilai, ***op. cit***, pp. 209- 278.

If most members of the community prefer differently, however, they can change the communal culture through proper political procedures. Hence, what liberals may perceive as an interruption to freedom of choice, community members may conceive as a choice to be seen differently. As part of their communal culture they have preferred unified clothing. One who wishes to choose another clothing can exist the community or try to change its habits. But to encourage state interference in that communal habit cannot be justified once communities are being perceived as constitutive settings of humanity.

The foundations of such an argument are not only rooted in Etzioni's important claims, but also in the democratic need to empower non-liberal and non-ruling communities as long as they exist in contemporary multicultural societies. If multiculturalism means anything beyond double standards, it is a democratic duty to maintain diversity of particularistic obligations. Such an argument protects the community from losing the culture that most of its members like to preserve in a democratic context. As long as an individual would like to be part of her/his community, he/she should respect its culture. I do presume that even in non-liberal communities we do know, which culture does the majority prefer.

That conclusion is based on ontological grounds, since the religious community considers the unified dressing as crucial part of its collective identity. It is also validated through the theoretical argument of Etzioni, since unity in clothing enables the community to mark the self-perceived necessary boundaries between itself and its surroundings. Furthermore, normatively it would be undemocratic to negate the right of a minority to preserve its collective culture as expressed through its clothing. In

addition to these communitarian claims, as exposed by Etzioni, there is the legal political argument that I advance for particularistic obligations in the junction between liberalism and non-liberal communities. Democratic regimes- possibly under the pretext of liberalism- will become utterly authoritative whilst advancing only one political tradition without protecting non-liberal cultures. There should be a particularistic obligation in democratic multiculturalism to respect others' non-liberal particularistic obligations, as well.

Now, let us make the case harder for communitarians by referring to the issue of disobedience in democracy. Assume a particularistic obligation of a community's member to obey a religious law that infringes upon a national secular law. Should we- adherents of multicultural democracies- be supportive of it, and under which criterion? Robert Cover, the critical legal pluralist, has referred to the redemptive principle as a criterion that may be used to justify the exception of state law's intervention in a communal order. Namely, Cover who had a great deal of critical suspicion of state law has justified its intervention notwithstanding, if the communal order generates harsh instances of discrimination between minority members.[7]

The same criterion applies, I argue, vis-a-versa. Hence, if the particularistic obligation elevates human conditions, it should be preferred, while if it makes human conditions worst, national or universal obligations should prevail. Let us mention two examples in that context. If a community generates a particularistic obligation among

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[7] Robert Cover in Martha Minow, Michael Ryan, and Austin Sarat (eds.) ***Narrative, Violence and the Law: The Essays of Robert Cover***. Ann Arbor: University of Michigan Press, 1992. PP. 13-49; 95-172; 203- 238.

its members that prevents women from education, then state law that requires otherwise should be imposed based on universal commitment to gender equality. Contrary, if a community generates a particularistic obligation to learn religious texts that are prohibited by state law and are not supported by any universal law, still the particularistic obligation overcomes. In both examples the redemptive principle overcomes, and it is the guideline of a communitarian solution to particularistic obligations in the junction of liberalism and non-liberal communities.

I am craving to examine the communitarian argument one step further, and refer to the issue of violence. Basically, like Etzioni who criticizes excessive communities, I do not consider violence to be protected by arguments for particularistic obligations, since violence does not redeem humanity but makes it worst. If members of a certain community consider themselves to be under the obligation to impose violence against other members, the state is justly entitled to intervene under concrete circumstances for the concrete purpose of protecting innocent people.

Thus, if he kills a woman because he thinks that she has been disloyal to him and has impaired the family honor, he is a murderer and he should be convicted. The fact that he has been socialized within a specific patriarchic culture, in which men are perceived as guardians of the family's purity, should not change the judgment. The communal cultural context may be raised, however, as a cultural defense in arguing for the punishment itself, and it should be considered within broader considerations of the public safety.

Conclusion

The contextualization of rights and obligations is an important endeavor to constitute a better society, a less alienated and more egalitarian society, in which people are committed to and benefited by their communal surroundings. In his essay, Amitai Etzioni is touching upon several types of arguments that prove why human betterment and our cultural constitution are dependent upon communities. My essay aims to convince why such a communitarian justification of particularistic obligations is important not only to liberal multiculturalism but also to a multicultural society that admits the maintenance of non-liberal communities as well.

If communitarian examination of modern politics is being taken seriously, as it should be, we may better formulate the interactions between liberal and non- liberal cultures in modern democracies through a more synergetic public policy that conceives particularistic obligations as part of evolving, what Etzioni calls, a better social ecology. The legitimate existence of non-liberal communities in Europe and North America, with their own non-liberal cultures, is a challenge to modern democratic theory. A communitarian approach to particularistic obligations, as a means to frame complementary constitutionalism to liberalism, is a solution to that challenge. Especially after the trauma of September 11, 2001, and on the verge of yet additional unfortunate violence, such particularistic obligations may redeem humanity from fantasies about a universal order that is stripped of local cultures. Such redemption should not pave the way for warfare but rather to solutions of human rights.