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BOOK REVIEW

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**Seth D. Kaplan, *Human Rights in Thick and Thin Societies: Universality Without Uniformity* (Cambridge University Press, 2018) 249 pp.
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Human Rights in Thick and Thin Societies: Universality Without Uniformity could not be more timely. It draws a compelling picture of the difference between human rights values in ‘thick’ societies (those which are focused on ‘maximising robustness of relationships and institutions’) and ‘thin’ societies (which favour ‘maximising individual freedom’) (pp. 2-3). The text sets up a clash between these two sets of values and, in particular, the tension between the thin Western human rights regime when it attempts to exercise hegemony and power over thick minority communities within their jurisdictions (particularly in an increasingly individualist and secular Europe), or thick societies in the Global South internationally.

Kaplan argues that the Western universalist tradition undervalues the role which culture plays in thick societies, seeing it merely as an excuse to withhold individual rights. *Universality Without Uniformity* draws a spectrum between the Western universalist tradition and hard-line relativism (which rejects any universalist values) and advocates a flexible universalist approach,

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which recognises the importance of both the universal human rights system in protecting rights but also maintains a place for culture and relativist values. However, rather than arguing for a new doctrine, Kaplan's thesis is that the original *Universal Declaration of Human Rights* (UDHR) in 1948 was the product of an already existing flexible universalism (pp. 16-17).

This book is especially timely as the still unfolding health crisis around the novel coronavirus SARS-CoV-2 has demonstrated the disparate way in which thick and thin societies managed their response to the pandemic. In particular, the emphasis placed by thick societies on duties (the so-called 'happy balance' described by Peng-chun Chang of China, one of the drafters of the UDHR, identified and analysed by Kaplan) shaped the way in which citizens complied with stronger restrictions in thick societies, seen for example in Vietnam's highly restrictive, but highly effective, COVID-19 policy.¹ This can be contrasted with the focus on individual rights (to not wear a mask, to continue to congregate in groups, to not take any eventual vaccine) in thin societies. This is illustrated most starkly in the recent decision of the Supreme Court of the United States in *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor of New York*,² which overturned New York's restrictions on religious services on the basis that such restrictions could cause 'irreparable harm' to the applicants' First Amendment freedoms.

Chapter 2 details the principles of flexible universalism both in terms of the proposed approach and that of the UDHR, which then provides a helpful context and contrast to Chapter 5's critique of the current Western discourse. According to Kaplan's thesis, the UDHR represents flexible universalism, identified through the inclusion of economic, social, and cultural rights and the fundamental focus of the Declaration on people, and their interactions, rather than the State (as it may have been, had the West fully controlled drafting). Chapter 2 will be of especial interest to those curious about underexplored aspects of the UDHR, particularly for its detailed review of how Peng-chun Chang helped shape the UDHR, through the Confucian concept of 'two-man

¹ Anna Jones, 'Coronavirus: How "Overreaction" Made Vietnam A Virus Success' *BBC News* (15 May 2020) <<https://www.bbc.com/news/world-asia-52628283>> accessed 7 December 2020.

² 592 US __ (2020).

mindedness', which sees itself expressed through Article 1's ideals of "conscience" and "spirit of brotherhood" (pp. 20-21).

By contrast, the Western formulation of human rights, Kaplan argues, is far too individualistic, misreading the UDHR and other human rights instruments as a string of separate guarantees (much in the way the Supreme Court of the United States has interpreted the US Bill of Rights), rather than an indivisible system of rights and duties, in balance, and mutually supportive. This critique of the Western tradition continues throughout the text, with Chapter 3 exploring the importance of cultural psychology and demonstrating how, rather than representing the orthodoxy, Westerners are in fact the real outliers in their understanding of the role that culture plays in the Western human rights tradition. Chapter 4 then further develops this theme through detailing the differences between thick and thin societies. However, the best demonstration of the failings of the Western tradition is Chapter 5, which explores the limits of Western human rights discourse. Kaplan identifies, similarly as has been noted about the drafting of the key human rights instruments, the inherent contrast between the way in which thick societies see social institutions as crucial to protecting or advancing rights, whereas thin societies see them as in natural conflict with rights. The text then goes on to identify how human rights has become monocultural and the dominant mode of public moral discourse, supplanting distributive justice, the common good, and solidarity. The analysis in this chapter is particularly sophisticated and is able to delve into the ways in which this paradigm manifests, including in 'social pressure', which, like outcasting, is a vital but often overlooked sanction under international law (pp. 126-133).

Chapters 6 and 7 break with the general analytic tone to focus on two specific case studies: the first, male circumcision, and the second, the *Gacaca* courts in Rwanda. The first case study is mainly interesting for its exploration of how the liberal school, which was forged through religion, now advocates against such religion and courts (like the German court decisions which form

the impetus for the chapter³) and prioritise every other right over religion. However, the chapter does not attempt to explain the *causes* of this shift towards a distinctly secular Western liberalism (in contrast with the tracing of the influence of the Cold War on other aspects of the discourse in the previous chapter), which leaves the reader curious to learn more.

Chapter 7 focuses on the *Gacaca* courts which followed the Rwandan genocide in the 1990s. The thesis of this section is not as clear cut as Chapter 6, as the ‘thick society’ position on these courts is not necessarily easy to identify, but the chapter is a fascinating, detailed exploration of a complex topic and a highly effective defence of the *Gacaca* courts. In fact, the defence may be slightly too weighted against the Western critique of the courts. The chapter makes nuanced criticisms of the fair trial process at the International Criminal Tribunal for Rwanda, but in identifying the benefits of the on-country, community-led restorative justice *Gacaca* model provided, seems to ignore the issues of corruption and unfairness which were associated with the courts.⁴ While such issues are by no means limited to thick society justice processes, recognition that at least some of the criticisms from Western human rights bodies attributed, in part, to the culture clash between thick and thin may have been merited.

The text concludes with another high note: Chapter 8, which details the rise of Eastern and Southern States challenging Western notions of human rights. This conclusion calls for a return to the beginning: the pluralist

³ Amtsgericht K n (County Court of Cologne) Judgment no 528 Ds 30/11, 21 September 2011; Landgericht K n (District Court of Cologne) Judgment no 151 Ns 169/11, 7 May 2012.

⁴ See, e.g. Human Rights Watch, ‘Justice Compromised: The Legacy of Rwanda’s Community-Based *Gacaca* Courts’ (Human Rights Watch, 2011) <<https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>> accessed 9 December 2020; Amnesty International, ‘The Troubled Course of Justice’, (Amnesty International, AI Index AFR 47/10/00, 2000) <<https://www.amnesty.org/download/Documents/132000/afr470102000en.pdf>> accessed 7 December 2020; Penal Reform International, ‘Rapport de monitoring et de recherche sur la *Gacaca*: Les t moignages et la prevue devant les juridictions *Gacaca*’ (Penal Reform International, 2008) 49 et seq; Ligue Rwandaise pour la Promotion et la D fense des Droits de l’Homme, ‘The Problems Arising From Information and Witness Evidence Before the *Gacaca* Courts’ (Ligue Rwandaise pour la Promotion et la D fense des Droits de l’Homme, 2006).

Westphalian Peace and the flexible universalism of the UDHR, and then details a three part proposal: *first*, the adoption of margin of appreciation for the rights under the UDHR (ranging from no margin, to low, medium, and high margin); *second*, a hierarchy of rights and *third*, a new global treaty on the 'greatest evils'. While argued effectively, advocating for the development of another treaty amidst a crowded and fragmented field seems counter-intuitive, particularly given the novel nature of Kaplan's other proposals and the overall call, in the text, to return to the principles of the UDHR.

This text is, however, a worthy and timely publication, with a thesis which is particularly relevant for the challenges currently faced by the global community. Flexible universalism emphasises the *human* aspect over the *rights* aspect and in a time of increasing uncertainty and danger, there is an especial need for collective action and solidarity, and a focus on maximising the robustness of the relationships between individuals, institutions and communities and, in so doing, the common good.