

# THE RIGHT TO FREEDOM OF EXPRESSION AS THE PRINCIPAL COMPONENT OF THE PRESERVATION OF PERSONAL DIGNITY: AN ARGUMENT FOR INTERNATIONAL PROTECTION WITHIN ALL NATIONS AND ACROSS ALL BORDERS

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## INTRODUCTION

Freedom of expression has long been considered a fundamental right in the United States of America.<sup>1</sup> The liberty to speak one's opinion<sup>2</sup> traditionally has been viewed as the pathway to the search for "the truth"<sup>3</sup> and a critical element of the pursuit of happiness.<sup>4</sup> The post-modernist would conceptualize freedom of expression as one important element of the individual's search to find his or her natural place both within and independent from society, within him or herself. The deconstructionist feminist perspective similarly holds freedom of expression as the means by which we, as members of a community, share beliefs, learn and grow, and pursue a rich and fulfilled life.<sup>5</sup>

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1. See Thomas Jefferson, The first Inaugural Address, *cited in* *Whitney v. California*, 274 U.S. 357, 375 n.2 (1927) (Brandeis and Holmes, J.J., concurring):

If there be any among us who would wish to dissolve this union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.

*Id.*

2. For a discussion of the freedom to make false statements see *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

3. *Id.* See generally JOHN STUART MILL, *ON LIBERTY* (1859).

4. *Whitney*, 274 U.S. at 375 (Brandeis and Holmes, J.J., concurring).

5. Susan H. Williams, *Feminist Jurisprudence and Free Speech Theory*, 68 TUL. L. REV. 1563, 1572 (1994).

While these different views of free speech contain notable distinctions, they all share a fundamentally positive opinion of the benefits and importance of free expression.

The deconstructionist feminist and the Communist<sup>6</sup> conceptions of free speech share certain similarities insofar as free speech is viewed as a good that must be subjected to some regulation by the community, for the benefit of the whole.<sup>7</sup> The Communist position is that unrestricted free speech poses a potential danger to the state and to the community. The feminist view, similarly, supports free speech only insofar as it propels the advancement of the community and particularly, as it affirmatively embraces the traditionally disenfranchised sectors of the community.<sup>8</sup>

Is free speech a fundamental right and inherent to all human beings by virtue of the fact that they are human, as the traditional American perspective maintains? Is it critical to the individual's sense of self, both as an autonomous and social being, as asserted by postmodern philosophy? Alternatively, is it fundamental in its importance, but neither inherent to the individual nor universally accessible, as the feminist perspective propounds? Or, is it neither fundamental nor inherent as it is viewed in the Communist People's Republic of China? This Article draws upon these four perspectives and argues that free speech is both fundamental and inherent, and is an integral part of the development and maintenance of the individual's sense of self and personal dignity.

The argument begins with the premise that the individual is paramount, and that the protection of his or her rights is superior to the protection of society as a whole. However, it is important not to view this individual as existing within a vacuum. He or she lives as a member of a community and therefore, while protection of his or her rights is the first priority, the protection of the life of the

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6. This Article presents the Communist perspective of The People's Republic of China. China is used as representative of Communism because it is one of the last remaining operating communist countries and because of the great importance of China in the world political and economic community.

7. Owen M. Fiss, *Two Constitutions*, 11 YALE J. INT'L L. 492, 502-03 (1986).

8. See generally CATHARINE MACKINNON, *ONLY WORDS* (1993).

community as an organic whole must also be considered as part of the free speech equation. Part I will examine, in greater depth, the four perspectives of freedom of expression introduced above. Part II will discuss the right to freedom of expression embodied in Article 19 of the Universal Declaration of Human Rights. Part III will address the proposition that freedom of expression is a fundamental and inalienable right and should be protected across national boundaries. Finally, the Article concludes that freedom of expression is an integral element of human dignity and should not be subject to court or government intervention.

## I. FOUR PERSPECTIVES ON FREEDOM OF EXPRESSION

### A. *The First Amendment Protection of Free Expression in the United States of America as Decided by the U.S. Supreme Court*

This section examines, in some depth, select opinions of Justices Holmes, Brandeis and Brennan as representative of the traditional American view of freedom of expression.

Justice Holmes, in his dissent in *Abrams v. United States*,<sup>9</sup> asserted that the right to freedom of expression is at the very foundation of our constitutional theory.<sup>10</sup> The expression of competing ideas in the marketplace of ideas, stated Holmes, is the best means of discovering the truth.<sup>11</sup> The truth, furthermore, is at the

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9. 250 U.S. 616 (1919). Abrams was convicted under the Espionage Act for publishing and distributing leaflets which disparaged the policies and actions of the United States, declared the United States and all capitalist countries to be the 'true' enemy and Russia to be the ally of the world's workers, and called for Russian emigrants to "spit in the face of the false military propaganda" of the United States, and to "make bullets not only for the Germans but also for the Workers Soviets of Russia." *Id.* at 625.

10. *Id.* at 630.

11. *Id.* The Holmesian position of achieving truth by permitting ideas to compete among themselves has had long endurance. In *Gertz v. Welch*, 418 U.S. 323, 339-40 (1974), the Court found that opinions serve the purpose of truth discovery and that the judicial system should stay out of the business of determining the truth or falsity of an opinion. The Court wrote, "[h]owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and

foundation of pursuit of the ultimate good, and pursuit of the ultimate good is the theoretical framework of the Constitution.<sup>12</sup> Therefore, through free expression and the search for the truth, the "purpose" of American liberty and democracy is realized:

When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.<sup>13</sup>

Justice Holmes disputed the majority's position that the backdrop of war should lessen the constitutional protection of free speech. According to Justice Holmes, "[o]nly the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law . . . abridging the freedom of speech.'"<sup>14</sup>

Similarly, Justice Brandeis, in his concurring opinion in *Whitney v. California*,<sup>15</sup> declared free expression to be the means to attain the truth, and the truth to be at the foundation of liberty and happiness.<sup>16</sup>

Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth . . . .<sup>17</sup>

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juries but on the competition of other ideas." *Id.*

12. *Abrams*, 250 U.S. at 630.

13. *Id.*

14. *Id.* at 630-31.

15. 274 U.S. 357 (1927).

16. *Id.*

17. *Id.* at 375.

Justice Brandeis maintained that open and vigorous discussion is critically important to protect democratic freedom, and reasoned that free speech and free assembly provide an "adequate protection" against false or harmful ideas: "[W]ithout free speech and assembly discussion would be futile . . . with them, discussion affords ordinary adequate protection against the dissemination of noxious doctrine . . . the greatest menace to freedom is an inert people . . . public discussion is a political duty; and this should be a fundamental principle of the American government."<sup>18</sup> Justice Brandeis conceded that "an emergency can justify repression,"<sup>19</sup> but qualified this by adding that *only* an emergency could justify such repression.<sup>20</sup> Interestingly, Justice Brandeis continued by stating that the privilege to declare an emergency and enforce repression is the necessary counterpart to freedom.<sup>21</sup> In other words, in Justice Brandeis's conception of a free and open society, liberty co-exists with a measure of repression and free speech co-exists with and conquers false speech. Indeed, Justice Brandeis maintained that the best weapon against false or harmful speech is more speech: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."<sup>22</sup>

Libel and defamation law in the United States also advances this sentiment of the primacy of free speech and the protection of the search for the truth. Justice Brennan in *New York Times Co. v. Sullivan*<sup>23</sup> asserted that debate on public issues must be protected, "uninhibited, robust, and wide-open."<sup>24</sup> In protection of the truth, in *Philadelphia Newspapers, Inc. v. Hepps*,<sup>25</sup> the Court held that where the statement concerns a media defendant, liability will not be

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18. *Id.*

19. *Id.* at 377.

20. *Id.* (emphasis added).

21. Justice Brandeis conceded: "Such must be the rule if authority is to be reconciled with freedom." *Id.*

22. *Id.*

23. 376 U.S. 254 (1964).

24. *Id.* at 270.

25. 475 U.S. 767 (1986).

found unless the statement can be proven false.<sup>26</sup> In other words, when the statement *may be true*, or when its truth cannot be disproved, it will be protected under the First Amendment, regardless of the harm it may cause to a public figure defendant.

In *Chaplinsky v. New Hampshire*,<sup>27</sup> the Supreme Court noted that only where the content of speech is determined to be of "such slight social value as a step to truth" may it be restrained in the interest of "soc[iety], order and morality."<sup>28</sup> The *Chaplinsky* decision permitted the restraint of "fighting words," defined as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace,"<sup>29</sup> while the *Paris Adult Theatre I v. Slaton*<sup>30</sup> decision permitted the restraint of expression considered to be obscene. An ordinance, however, that prohibited placing an object or symbol on public or private property, which would reasonably arouse anger or otherwise cause distress to another individual on the basis of race, color, creed, religion or gender, was struck down by the Supreme Court on constitutional grounds in *R.A.V. v. St. Paul*,<sup>31</sup> despite the fact that the message relayed was arguably of "slight social value."<sup>32</sup> In the *R.A.V.* decision, the "search for truth" as a social value was deleted from the equation of protecting "open and robust debate" for the promotion of a free society, and no other value was substituted, except perhaps a "slippery-slope" type of admonishment.<sup>33</sup>

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26. *Id.* at 777.

27. 315 U.S. 568 (1942).

28. *Id.* at 572.

29. *Id.*

30. 413 U.S. 49 (1973).

31. 508 U.S. 377 (1992).

32. *Chaplinsky*, 315 U.S. at 572.

33. See Frederick Schauer, *Slippery Slopes*, 99 HARV. L. REV. 361 (1985).

The slippery slope argument, as described by Schauer, does not argue for the inherent value of protecting the case currently under review, but, rather, asserts that if the current case does not receive protection, then who knows where this decision not to protect will stop. *Id.* at 369. It is analogous to the snowball effect, where the small snowball at the top of the hill is not dangerous, but the large mass that has accumulated from the roll down the hill is, and further, once it begins downward, it is difficult to tell at what point one must stop it in order to forestall the impending danger. Similarly, in *National Socialist Party of Am. v. Village of Skokie*, 432 U.S.

Similarly, restraints on pornographic expression face First Amendment challenges based on whether they can be said to contain "serious" social value.<sup>34</sup> This extraction of the truth or social value from free expression protection leads to the rather empty shell of expression protected for the sake of expression itself, rather than for the purpose of an intrinsic or extrinsic value.

*B. One Post-Modernist's Perspective of the Self  
and Freedom of Expression*

This section analyzes the place of the self in society, using as its

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43 (1977), which involved protecting the freedom of expression claim of a Nazi group that wished to engage in a public demonstration in the town of Skokie, where the majority of the audience had been formerly persecuted by the Nazis during World War II, the Court appeared to be more concerned with a "slippery slopes" threat to freedom of expression rather than any inherent social value of Nazis speaking their minds to the population of Skokie. The Court effectively queried where censorship would end if the government prohibited the Nazi Party from relating its message because of its content. Schauer notes that most freedom of expression challenges that rise to the point of litigation involve fringe, or apparently noxious, individuals or groups, lead to the natural human inclination to over-restrain the patently offensive, rather than to prohibit, in a neutral manner. This tendency to over-restrain, thus, lends fuel to the flame (or snow to the snowball, as the case may be) of the slippery slope argument. Schauer, *supra* at 377.

Even as society has internalized the values of free speech in abstract form, the particular applications of the principle of free speech remain counterintuitive to most people. Jurors, for example, are not called upon to consider and defend the free speech rights of Bob Hope or Billy Graham. Rather, they are asked to protect those who are unpopular, such as the Hare Krishnas and the Jehovah's Witnesses, and those who are simply wicked, including the Nazis and the Ku Klux Klan. The decisionmaker's negative view of the parties is likely to lead to mistakes of a particular kind, to oversuppression rather than undersuppression, in the application of free speech principles, and these mistakes serve to create the special slippery slope danger.

*Id.* See also Frederick Schauer, *Codifying the First Amendment: New York v. Ferber*, 1982 SUP. CT. REV. 285, 315-16; Geoffrey R. Stone, *Content Regulation and the First Amendment*, 25 WM. & MARY L. REV. 189, 225 (1983); Frederick Schauer, *Free Speech and the Demise of the Soapbox*, 84 COLUM. L. REV. 558, 566 (1984) (book review), cited in Schauer, *Slippery Slopes*, 99 HARV. L. REV. at 377.

34. See *Miller v. California*, 413 U.S. 15 (1973).

principle source Roberto Mangabeira Unger's essay *Passion*.<sup>35</sup> Unger constructs a new place for the individual within society and thereby rescues the modern autonomous individual from the spiritual island of social iconoclasm.<sup>36</sup> The Holmesian individual, by contrast, seems to have very little substantive connection with his fellow man. His freedom of expression metaphorically exists as a battling soldier against the words of others, and through the nonviolent combat of the open and robust debate the truth is attained as an entity apart from those who utter it.<sup>37</sup>

Under the Holmesian view, to be truly free, the individual must dispute the conventional, cast off the yoke of the established, and search for the genuine truth as a thing separate from the institution of society. The truth is the good to be attained, unique to the individual's personal perception. Yet the marketplace in which this skirmish takes place is, of course, society and the result -- the production of the human good -- itself nourishes and sustains the community.

Unger returns the autonomous individual to the community and re-creates the place for individual passion within the continuum of autonomy in conflict with social acceptance. Unger argues that personal passion, which is unshackled by social convention and essential to the quest for freedom, must exist as a counterpart to the human need for acceptance and support by a stable community.<sup>38</sup> One facet cannot exist without the other: the wild and the free need the solid structure of society, just as society needs passions in order for it to remain free and vital. However, existing social constructs are found by the passionate soul to be ever-inadequate and requiring change. It is through this dialectic, of sorts, that some balance of public and private freedom is attained. According to Unger:

We face two overriding problems. One is that the requirements of self-assertion conflict. The other is that though we must settle down to particular contexts, no

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35. ROBERTO MANGABEIRA UNGER, *PASSION: AN ESSAY ON PERSONALITY* (1984).

36. *See generally id.*

37. *See generally* Abrams, 250 U.S. 616, 630 (Holmes, J., dissenting).

38. UNGER, *supra* note 35, at 104.



contexts in particular do justice to our desires and capabilities. We understand ourselves by discovering the unsuspected ways in which these two problems get implicated in each other. We empower ourselves by holding on to both sides of these dilemmas and by inventing, through forms of life and stratagems of imagination, the freedom that is possible despite their insolubility and because of their insolubility.<sup>39</sup>

Free expression is again the means by which truth is attained, but here a truth integral to the vitality of the individual as an active yet free participant in society.

### C. *The Feminist Deconstructionist Perspective of Freedom of Expression*

Feminist deconstructionists question the validity of this protection of words and expressive actions in the absence of the protection of values, individuals, or the community. Truth as a distinct value again fuses with the concept of justifying the protection of freedom of expression. However, truth from this perspective is not viewed as an objective, higher reality discovered through the process of battling truths, lesser truths, and non-truths. Rather, truth is a shared experience, "evaluative and perspectival"<sup>40</sup> based on the opinions of the individuals who espouse it, and "constructed"<sup>41</sup> out of the views of the community. Truth, thus, as a shared experience and a mutually discovered condition, possesses value because it is the natural result of the coming together of diverse views and the essential foundation for a living, growing, functioning community.<sup>42</sup> Truth is the creature born of the social condition of living, working, speaking, and acting together.

[T]ruth and knowledge grow out of and form the basis for a shared social life. . . . Without a process of knowledge formation, a society could not long sustain the shared life on which so much depends. . . . Speech is one of the

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39. *Id.* at 193.

40. Williams, *supra* note 5, at 1572.

41. *Id.* at 1572-74.

42. *Id.* at 1572.

ways in which we can construct this new kind of truth together. Listening to the speech of others makes us more aware of the diversity of views and the limitations of our own perspectives, provides an opportunity to learn openness on all levels, and gives us the materials for self-criticism. Our own speech allows us to contribute to this process of cultural construction and actually to practice honest self-criticism. . . . Indeed, this model of dialogue - in which the participants come together to create an understanding that neither possessed alone - surely is one of the great hopes and promises of speech.<sup>43</sup>

If truth is the creature of our shared, communal experience, then necessarily, all members of the community must have an equal opportunity to participate in its creation, otherwise truth will be flawed and expression neither will be genuinely protected nor free. Catharine MacKinnon notes that in a society such as our own, "some people get a lot more speech than others."<sup>44</sup> That is, where injustices and inequality persist, free expression is available only to those who are among the politically powerful. This social condition excludes the oppressed or subjugated groups, including women and racial minorities. Indeed, protecting free speech of those among the politically empowered without likewise ensuring access to free expression to those along the periphery or among the disenfranchised tends to aggravate social injustices and subjugate further the politically alienated or oppressed, thus creating a very lopsided condition of far less than universal free speech. MacKinnon asserts that if access to public speech media was open to all, and speech, therefore, genuinely was free, then the injustices and inequalities existent in society might be exposed for what they are, and suppressing expression would no longer be protected under the guise of free speech.

If speech were seen through an equality lens, nude dancing regulations might be tailored to ending the sex inequality of prostitution, at the same time undermining the social credibility of the pimp's lie that public sex is how women express themselves. Crossburning prohibitions would be seen as the civil rights protections

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43. Williams, *supra* note 5, at 1572.

44. MacKinnon, *supra* note 8, at 72.

they are. Women might be seen to have a sex equality right to the speech of abortion counseling. Poverty might even be seen as the inequality underlying street begging, at once supporting the speech interest in such solicitations and suggesting that equal access to speech might begin before all one can say is "spare change?"<sup>45</sup>

MacKinnon's utopian image, thus, expands free expression to include access by *all* persons, and views truth as the amalgamation of *all* competing viewpoints, rather than the "sanitized"<sup>46</sup> or objectified version held by traditional free speech theorists.

The feminist view of free speech seeks to embrace all people in society in the search for some form of shared, yet evolving, truth. Such an approach would advance not only the freedom of the individual, but also the interests of society as a whole. Individual free expression would be ensured, but in a reciprocal and mutually supportive relationship with the community. The Communist perspective on free speech, by contrast, assigns absolute priority to the well-being of the community, and in so doing, sacrifices individual freedom of expression.

#### *D. The Communist View of a Right to Free Speech*

In the Communist society of the People's Republic of China, free speech may exist only so far as it serves the interests of the community.<sup>47</sup> Under the 1982 Constitution, Article 35 states that, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."<sup>48</sup> However, all individual rights, including the right to free speech, are qualified by Article 51, which asserts the unequivocal priority of group interests over individual rights: "The exercise of citizens of the People's Republic of China of their

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45. *Id.* at 85-86.

46. *Id.* at 77.

47. For a more in-depth discussion of Communist China's distinct perceptions of personal freedoms and human rights, see Mélanne Andromedea Civic, *International and Chinese Human Rights: Universality Versus Cultural Relativism*, 2 BUFFALO J. INT'L L. 285 (1995).

48. XIANFA [Constitution] (1982) art. 35. (P.R.C.).

freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens."<sup>49</sup> All individual rights are restricted additionally by the requirements of Article 54: "It is the duty of citizens of the People's Republic of China to safeguard the security, honour and interest of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland."<sup>50</sup> In practice, free speech in China is that which remains after one has taken into account all of the interests of the community. Speech and other forms of expression must be internally, as well as externally, restrained to serve *all* of the people. Professor Owen Fiss reveals the qualitative scope of free speech under the Chinese Constitution:

In China, even under the new constitution, free speech appears as a residue; it remains after we have reached the outer boundary of the statute (or other form of law). Article 35 tells citizens what they might do, but is not a restriction on the power of the state. They are allowed to engage in speech that is lawful.<sup>51</sup>

Thus, the Chinese perception of free speech in particular, and human rights in general, is propelled by Communist ideology which emphasizes the interests of the community at the expense of individual interests. Finally, the "rights" of the individual are defined relative to his duties to the community, and are subject to qualification, restriction and repression for community interests, as defined by the Communist Party elite.<sup>52</sup>

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49. *Id.* art. 51.

50. *Id.* art. 54. This provision has been invoked by the government to justify the suppression of democratic demonstration, including the Tiananmen Square incident in 1989, as counter-revolutionary acts creating threats to the security, honor and interests of the country. See generally Xinhua Gen. Overseas News Serv., *Why Impose Martial Law in Beijing*, June 21, 1989; Brit. Broadcasting Corp., *Peking CCP Discusses Recent Turmoil and Reasons for Martial Law*, BBC SUMMARY OF WORLD BROADCASTS, June 5, 1989, at FE/0474/B2/1 (full text translation of Propaganda Dep't of the Beijing Mun. CCP Comm., *Recognise the Essence of Turmoil and the Necessity of Martial Law*, XINHUA NEWS SERV., May 29, 1989).

51. Fiss, *supra* note 7, at 497.

52. See XIANFA [Constitution] (1982) arts. 51, 54; see also Fiss, *supra* note 7.

The search for the truth is neither an objectified marketplace of competing ideas, as in the Holmesian model, nor a shared community experience as in the feminist deconstructionist approach. Rather, the "search" for "truth" takes the form of the espousal of the appointed truth -- the propagation of the party line as it is the dominant belief system. Competing viewpoints not only are not explored, they are suppressed and are expected to be repressed.

In a sense, the Chinese Communist approach can be characterized as an extremist version of MacKinnon's equality model and one which tramples over any expression of individuality and destroys the integrity of personal freedom. This model of equality, an artificial construct of the ruling elite, attempts to stamp out competing ideas, enforce uniformity, and dictate a prescribed "truth," which is in stark contrast to the feminist view of equal access to and universal opportunity for free expression within a society, or the Post-Modernist perspective of the individual in a conflicting, yet mutually reinforcing, relationship with society.

## II. ARTICLE 19 AND WHAT IT PURPORTS TO PROTECT

Article 19 of the Universal Declaration of Human Rights<sup>53</sup> states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>54</sup> Article 19 appears to describe a comprehensive individual right to freedom of expression. It covers not only speech, but also other forms of expression, as well as the receiving and imparting of information or ideas on any topic, in any form by means of any method and within and between all nations.<sup>55</sup>

This right may be viewed as a right genuinely held by the *individual*. "Everyone," the first word of Article 19, encompasses all persons and makes no distinctions based on citizenship, gender, race, age, profession, etc. The next phrase, "has the right," includes no

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53. G.A. Res. 217 A (III), Dec. 10, 1948, U.N. Doc. A/810, at 71 (1948) [hereinafter Universal Declaration].

54. *Id.* art. 19.

55. *Id.*

qualifications as to how the right is obtained and thereby indicates the inherent nature of the right. Re-assembling the phrase, "Everyone has the right . . ." means, therefore, that all persons possess the right within them, that their nation does not award them the right, and even the international community is not the giver of the right. As one is human, one has the right of freedom of expression regardless of where one lives and regardless of the medium by which one chooses to exercise the right. This is the broad scope of freedom of expression that Article 19, standing alone, appears to guarantee.

However, Article 19 is not an entirely unrestrained freedom. As was noted at the Sixth International Symposium on the European Human Rights Convention and Freedom of Expression: "no democratic society has yet removed the obstacles to full freedom of expression, and it is improbable that any will do so in the near future."<sup>56</sup> Article 19 must be read in conjunction with, and in the context of, Article 29<sup>57</sup> which limits rights where they are in direct conflict with group interests, but only to the extent necessary to preserve the rights of others. Specifically, Article 29 states that:

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United

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56. Danilo Türk & Louis Joinet, *The Right to Freedom of Expression: Current Problems of Its Realization and Measures Necessary for Its Strength and Promotion, Excerpts from the Update of the Preliminary Report Prepared for the U.N. Sub-Committee on the Prevention of Discrimination and Protection of Minorities*, U.N. Doc. E/CN.4/Sub.2/1991, July 9, 1991, in *STRIKING A BALANCE* 35, 38 (Sandra Coliver ed. 1992) (quoting Lord McGregor of Durris, President of the Advertising Standards Authority of London, at the Sixth International Symposium on the European Human Rights Convention and Freedom of Expression).

57. Universal Declaration, *supra* note 53, art. 29.

Nations.<sup>58</sup>

In cultures that value group rights over individual rights, Article 29 has been interpreted broadly, essentially eviscerating Article 19. At the United Nations World Conference for Human Rights,<sup>59</sup> the community of international non-governmental organizations expressed concern that phrases, such as the one which appears in Article 29(2): "everyone shall be subject only to such limitations as are determined by law . . ." <sup>60</sup> may and indeed have been interpreted with a low emphasis on the word "only" and great emphasis on "as determined" by law" and on the policing rights of the state.<sup>61</sup> The result is that individual nations have asserted that they have the right to determine through their own laws the extent to which freedom of expression may be curtailed for the protection of public order, morality and the general welfare, as interpreted domestically by their culture and community.

According to the London-based nongovernmental organization, Article XIX, such an interpretation runs counter to the original intent of the framers of the Universal Declaration of Human Rights,<sup>62</sup> the International Covenant of Civil and Political Rights,<sup>63</sup> and of the more recent re-examinations and re-evaluations by U.N. Special Rapporteurs.<sup>64</sup> The more accurate interpretation is that states have authority to pass laws which limit freedom of expression only for the purpose of the protection of racial, ethnic or other minorities, and only to the extent necessary to achieve this goal.<sup>65</sup> It is necessary, at

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58. *Id.*

59. United Nations World Conference for Human Rights, Vienna, Austria, June 14-24, 1993 [hereinafter World Conference].

60. Universal Declaration, *supra* note 53, art. 29(2).

61. At several briefing sessions held by the United States delegation for the non-governmental organizations, this was a consistent concern voiced by non-governmental organization representatives.

62. Universal Declaration, *supra* note 53.

63. G.A. Res. 2200A (XXI), Dec. 16, 1966, 21 U.N. GAOR Supp. (No. 16) at 22, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force on Mar. 23, 1976 [hereinafter ICCPR].

64. *See generally* Türk and Joinet, *supra* note 56.

65. *Id.* at 6.

times, to "strike a balance" between the freedom of expression imperative and the interests of minorities who often need special protections in order to attain the same level of freedom as the majority group.<sup>66</sup> This balance does not permit a *carte blanche* derogation of the right, indeed, bald derogation would drastically tip the scales away from a balance of any kind.<sup>67</sup>

In 1990, two Special Rapporteurs prepared a preliminary report,<sup>68</sup> as requested by the Sub-Commission on Prevention of Discrimination and Protection of Minorities [hereinafter the Sub-Commission]<sup>69</sup> for the U.N. Commission on Human Rights [hereinafter the Commission],<sup>70</sup> which was a re-examination of the right to freedom of opinion and expression as described by Article 19 of the Universal Declaration of Human Rights<sup>71</sup> and the International Covenant on Civil and Political Rights.<sup>72</sup> In 1992, the report was updated and presented to the Commission. The updated report contains two observations which are particularly relevant here.

First, the Rapporteurs "categorically confirm[ed] that freedom of

66. Note the similarities here with the feminist deconstructionist argument. See *supra* Part II.C.

67. Case law of the European Court of Human Rights supports this balancing proposition:

[O]n the one hand . . . freedom of expression constitutes one of the basic foundations of a democratic society, one of the prime conditions for its progress and for the full development of every individual; on the other hand it also emphasizes that freedom of expression may come up against the exercise of other freedoms and . . . it may not always be easy to set the fundamental rights and freedoms of the person in order of importance.

Türk & Joinet, *supra* note 56, para. 14, at 37.

68. *Id.*

69. The U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities is a subsidiary body of the U.N. Commission on Human Rights and consists of 26 experts, nominated by their own governments, but serving in their individual capacities as experts. *Id.* at 35.

70. The U.N. Commission on Human Rights consists of 53 government representatives which reports to the General Assembly through the Economic and Social Council. *Id.*

71. Universal Declaration, *supra* note 53.

72. ICCPR, *supra* note 63.



expression . . . constitutes a fundamental right."<sup>73</sup> Second, the report clarified the place of Article 29(2) in the implementation of Article 19:

[E]ven when provided for by the law, a restriction is permissible only if it has in view one of the objects limitatively enumerated by the texts concerned. It is noteworthy that the wider a law is, the less its constitutive elements are defined, the more difficult it is to monitor respect for this second criterion which one could call "legitimacy," and the easier it is for a State to claim to have one of these objectives in view or to divert laws from the objective which they claim to pursue. From this point of view, the control of legitimacy is far from illusory; it is the natural extension of that of legality.<sup>74</sup>

Thus, a restriction imposed on the fundamental right to free expression must be (1) provided by law, (2) designed expressly to carry out the purposes permitted under Article 29(2), and only those purposes, and to pass the test of legitimacy, (3) the law should be narrowly tailored to address specifically one of these permissible purposes.<sup>75</sup>

### III. WHY DEFEND A RIGHT TO FREE EXPRESSION ACROSS NATIONAL BOUNDARIES?

If freedom of expression is integral to human dignity, then protecting it, not only in our own nation, but across national boundaries -- in all places where human beings reside and against all forces, governmental or otherwise -- is a human and a world community imperative. The next section further explores the proposition that freedom of expression is a fundamental and inalienable right.

#### A. *Is Freedom of Expression a Fundamental and/or Inalienable Right?*

Western cultures tend to view the set of rights articulated in the

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73. Türk & Joinet, *supra* note 56, para. 6, at 37.

74. *Id.* para. 41 at 40.

75. See generally Türk and Joinet, *supra* note 56, at 40.

Universal Declaration of Human Rights,<sup>76</sup> as, at minimum, both fundamental and inalienable. These rights are those that were set down by a core group of the original member states of the United Nations, including representatives from Australia, Chile, Nationalist China, France, Lebanon, the United States, the United Kingdom and the Soviet Union. According to John Humphrey, the first Director of the United Nations Division of Human Rights, the final draft was substantially Western-influenced and was essentially a "combin[ation] of humanitarian liberalism with social democracy."<sup>77</sup> The Western view of rights is derived principally from natural law theory which is founded upon classical ethics and Judeo-Christian morality.<sup>78</sup>

As the demonstration of the fundamental and inalienable nature of these rights, the Preambles of both the Universal Declaration of Human Rights<sup>79</sup> and the International Covenant of Civil and Political Rights<sup>80</sup> assert human dignity as the basis for the rights set forth in the respective documents: ". . . these rights derive from the inherent dignity of the person. . . ."<sup>81</sup> Some prominent human rights scholars also maintain that human dignity is the foundation of all fundamental human rights.<sup>82</sup>

Freedom of expression is articulated in Article 19 of both of these documents and, therefore, the dignity claim asserted in the Preambles applies to freedom of expression. Of course, this piece of evidence is not sufficient to prove that the very sense of our human dignity requires that we enjoy the "right to freedom of opinion and

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76. Universal Declaration, *supra* note 53.

77. JOHN P. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE* 8 (1984).

78. See A. P. D'ENTREVES, *NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY* 51-64 (1970).

79. Universal Declaration, *supra* note 53, pmb1.

80. ICCPR, *supra* note 63, pmb1.

81. Universal Declaration, *supra* note 53, pmb1.; ICCPR, *supra* note 63, pmb1.

82. See generally Jack Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303 (1982); Rhoda E. Howard and Jack Donnelly, *Human Dignity, Human Rights and Political Regimes*, 80 AM. POL. SCI. REV. 801, 801-17 (1986).

expression,"<sup>83</sup> but it does provide some relevant evidence of the intent of the framers of these documents, *as long as* it can be assumed that the diverse group of nations who were involved in the drafting all shared a universal sense of what was meant by the phrase "dignity of the person."<sup>84</sup> That assumption is not necessarily valid, because from a culturally relativistic perspective, human dignity may be seen not only as a personal experience, exclusively attainable within the individual, but also, alternatively, as a shared experience achieved through participation in the community, or as a state of existence of the community, as a description of a well-functioning political state.

As touched upon above, some cultures and philosophical systems find neither individual rights in general, nor the right to freedom of expression in particular, either fundamental or inalienable or necessarily founded upon personal human dignity.<sup>85</sup> Indeed, we have seen that some nations view individual rights as privileges, rather than rights, awarded by and under the regulation of the state. Human dignity is not specifically recognized as an individual claim, rather, the collective dignity of the community is principally at issue, and personal dignity may be achieved through a dignified body polity. Personal dignity, according to this perspective, is one after-effect where rights and duties imposed by the state preserve the well-being of the state.

The Chinese priority of group interests over individual rights, for example leads to a preference for group-oriented rights and privileges, which generally include subsistence economic rights, as well as social and cultural rights.<sup>86</sup> This preference is asserted conceptually

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83. Universal Declaration, *supra* note 53, art. 19.

84. *Id.*

85. John O'Manique defines inalienability as regards human rights to be "a right that exists by virtue of the right-holder's existence. It is not created or granted by some agent and therefore cannot be taken away by such an agent." John O'Manique, *Universal and Inalienable Rights; A Search for Foundations*, 12 HUM. RTS. Q. 465, 467 (1990).

86. For a catalogue of group-oriented rights as recognized by the international community, see the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), Dec. 16, 1966, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S., entered into force on Jan. 3, 1976.

through the considered importance of the right or privilege in question, determines the time-line for the nation's attempts at implementation of the particular right or privilege, and indeed disparages the protection of individual rights in general. China and some African nations have maintained that economic and social rights serve their national interest and that their implementation must take priority over political rights concerns.<sup>87</sup> In other words, speech or expression cannot be permitted to be free under the law of these nations, if and where free speech interferes with the state's attempt to promote its policies of economic reform for the general welfare.<sup>88</sup>

The dominant Western viewpoint, by contrast, as represented by the United States, asserts that if any right or group of rights must be implemented sequentially, then freedom of expression and the other political rights must take priority over economic, social, or cultural rights. These priority and implementation issues are the crux of the debate of cultural relativism<sup>89</sup> which relates back to the question of human dignity.<sup>90</sup>

Scholars in the fields of politics, philosophy, law and human

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87. See generally *Human Rights in an East Asian Perspective*, in HUMAN RIGHTS IN EAST ASIA (James C. Hsiung ed. 1985); Info. Office of the State Council of the People's Republic of China, *Human Rights in China*, BEIJING REV., Nov. 4-10, 1991, at 34 (articulating China's official position on human rights); Rep. of the Regional Meeting of the World Conference on Human Rights [The Tunis Declaration], U.N. GAOR, 47th Sess., at 1-3, U.N. Doc. A/CONF.157/AFRM/14 (1992).

88. Where political institutions are either weak or so new to the culture that they are ineffective, political participation normally means social chaos. Distribution of subsistence is made more difficult, if not impossible by such social chaos. Once economic development is attained and all people are fed, clothed, have a job and a place to live, then the priority may possibly shift to political rights and institution-building, depending upon the particular circumstances of the nation. According to the "full-belly" thesis, a man's belly must be full before he can indulge in the "luxury" of worrying about his political freedoms. Rhoda Howard, *The Full-Belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidence from Sub-Saharan Africa*, 5 HUM. RTS. Q. 467, 469 (1983).

89. See generally *id.*; Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400 (1984).

90. For a more in-depth discussion of cultural relativism, see *Civic*, *supra* note 47.

rights have debated the culturally relativistic approach to human rights. The general argument in support of cultural relativism maintains that an individual nation should have the prerogative of prioritizing rights in a manner appropriate to its culture and political and economic circumstances.<sup>91</sup>

Rhoda Howard patently refutes the validity of cultural relativism and denies the proposition that economic rights should, or even can, be implemented before political rights.<sup>92</sup> She notes that without political rights there exist no checks on government to ensure the equitable distribution of the products of economic development. Additionally, Howard asserts that "psychological sustenance," as distinct from physical sustenance, requires that citizens feel a sense of personal dignity and individual control or influence over their own lives.<sup>93</sup> This human dignity, according to Howard, can be guaranteed only through civil and political human rights.

At first glance, Howard's argument appears to support a cultural relativism which favors political over economic rights, but upon a closer look one can see that she is stating that the cultural relativist claim that economic rights must be achieved prior to the implementation of political rights, threatens the integrity of all rights. Thus, Howard states, "suspension of civil and political rights in these countries until after economic development has been achieved will in effect mean that neither development nor rights will be attained."<sup>94</sup> Human dignity is at the heart of human rights and human existence, and political rights, operating in concert with economic rights, are essential to achieving this sense of dignity.

Indeed, the experience of the United States during the 1950s through the 1970s and the Johnson and Nixon administrations' "war on poverty,"<sup>95</sup> underscores Howard's thesis. During the 1950s, the

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91. See Donnelly, *supra* note 82.

92. See generally Howard, *supra* note 88. But see Donnelly, *supra* note 82.

93. Howard, *supra* note 88.

94. *Id.* at 468.

95. President Lyndon Johnson coined the phrase "War on Poverty," as a pillar of his Great Society reforms. The American Experience, *The War on Poverty* (PBS television broadcast, Jan. 16-18, 1995). In his January 1964 State of the Union Message, President Lyndon Johnson said the following:

U.S. was the most economically prosperous nation in the world and yet it contained a large and growing underclass of severely poor individuals, many of whom could not even afford sufficient food, clothing or housing to meet their most basic needs. African American persons, for example, continued to face discrimination in access to work or in securing suitable wages and many were among the unemployed or the working poor.<sup>96</sup>

During the 1950s, a civil rights movement took form which, in the 1960s, began to demand economic freedom and equal opportunity. During the 1960s and 1970s, individuals organized and protested for a right to a basic subsistence wage to be guaranteed by the government and to a *right* to welfare. Some progress was made, and much more needs to be made, but the principal point of this paper is not to critique adequacy of the social reforms, but rather is to note that organizing and protests, picketing, sit-ins, speaking to the press and other media, and finally, achieving the goal of having some people in the broader society and in government take notice and actually do something in response, were only possible because of the constitutional right to freedom of expression. Changing the shortcomings of the social system and improving the problems of poverty *began* with the right of the afflicted and their supporters to speak out and try to make themselves heard.

In the absence of free speech rights, the poverty conditions may have led alternatively either to the creation of a permanent and complacent underclass and a public health and welfare tragedy, or a violent revolution. Of course, freedom of expression is not always *enough* to change social policy, particularly where those in power

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Let this session of Congress be known as the session which did more for civil rights than the last hundred sessions combined . . . as the session which declared all-out war on human poverty and unemployment in these United States. . . . this and more can and must be done.

*Cited in* FRANK FREIDEL, *OUR COUNTRY'S PRESIDENTS* 240 (1966).

96. Other examples include the residents of the Pennsylvania and West Virginia coal towns of the Appalachian mountains, many of whom became economically displaced with industry's shift away from the use of coal. Additionally, the expanded mechanization of many industries left large numbers of persons "obsolete" in the work force and without work. The American Experience, *supra* note 95.

refuse to *hear*. The right to speak out does not mean a guarantee to be heard. Particularly troubling is the fact that in the past twenty-five years, many in power have ignored the protests of those who advocate rights for the poor or failed to act upon the problems of poverty completely and comprehensively to the point that the creation of a permanent underclass or a revolution may yet be the end result. Nevertheless, such an underclass is not, and need never be, complacent -- it can continue to voice its protests and someone in power will eventually take notice and take action, even if only motivated by the desire to quiet the protests.

Furthermore, in the absence of free expression rights, even if action had been taken on the issue of poverty, as in the above example, the afflicted persons would not and could not have played any role in the making of policy because they and their opinions would have been removed from the social policy equation. Then, the proposed solutions would have been based entirely upon another person's or group's beneficence and this other entity's decision.<sup>97</sup> Does not personal dignity demand that one play a role in major decisions that affect his or her life?

The culturally relativistic approach to human rights was formally rejected and universality was adopted by the world community in its place at the 1993 United Nations World Conference for Human Rights.<sup>98</sup> Universality, among its other tenants, views freedom of expression, as well as *all* of the rights articulated in the Universal Declaration of Human Rights,<sup>99</sup> to be universally applicable, regardless of culture, to all people, regardless of national origin or state citizenship, by virtue of their being human, and considers *each*

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97. The belief that it is not "right" or that it compromises human dignity to allow others to decide important issues for us is at the very foundation of democratic theory. Justice Brennan, in his dissent in *Paris Adult Theatre*, noted the dangers that arise even where the state is permitted to decide that expression considered obscene may be suppressed, because once the state is given such a power over personal expression, "[i]t is hard to see how state-ordered regimentation of our minds can ever be forestalled. 413 U.S. 49, 110 (1973).

98. World Conference, *supra* note 59.

99. Universal Declaration, *supra* note 53.

of these rights to be of universal and equivalent importance.<sup>100</sup> Furthermore, the Universal Declaration of Human Rights,<sup>101</sup> describes the minimum level of compliance.<sup>102</sup> As stated in the Vienna Declaration:

All human rights are universal, indivisible and inter-dependent and inter-related. The international community must treat human rights globally in a fair and equal manner in the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>103</sup>

Additionally, where international norms and national standards are in

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100. The universality construct consists of four elements. Professor Vlit Muntarbhorn, The Universality of Standards, Lecture for 24th Study Session, July 2-30, 1993, Rene Cassin International Institute of Human Rights (notes on file with author). Universality condemns the practice of prioritizing human rights within a country or community, and particularly disdains the repression or exclusion of one or another "generation" of rights. *Id.* The different "generations" of rights are generally considered to be: (1) civil and political; (2) economic, social and cultural; and (3) rights of solidarity. See Philip Alston, *A Third Generation of Solidarity Right: Progressive Development or Obfuscation of International Human Rights Law?*, 29 NETH. INT'L L. REV. 307, 321 (1982); see generally Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1 (1982). O'Manique describes universality as the

practical conclusion to [the inalienability of human rights] . . . that rights are not creations of society, state, or any political authority, legitimate or not, and therefore cannot be limited or removed by them. If this were the case it would follow that all humans have rights in the same way and to the same extent regardless of their race, culture, political system or any other distinction. In other words, human rights would be universal.

O'Manique, *supra* note 85, at 467.

101. Universal Declaration, *supra* note 53.

102. Muntarbhorn, *supra* note 100.

103. Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23, adopted by the World Conference on Human Rights in Vienna, Austria, June 25, 1993, sec. 1, para. 3.



direct conflict, the international standards must prevail.<sup>104</sup> Finally, it is the duty of the international community to enforce international human rights, and such enforcement must not be considered an unlawful intrusion on domestic sovereignty.<sup>105</sup>

What this means for freedom of expression internationally is that all nations, regardless of culture or political circumstances, are faced with the imperative of honoring and enforcing a right to freedom of expression within their own countries and *within all other countries*. Of the 180 nations that attended the World Conference and debated over the drafting stage of the Vienna Declaration, all participants approved the final document and, therefore, all 180 nations are morally bound to uphold the universality principle.<sup>106</sup>

In summary, history has shown that personal dignity precedes and is at the foundation of human rights and individual human rights are at the foundation of community dignity and are critical to the proper functioning of the community. Still, regardless of the culturally relativistic interpretations formerly attributed to the meaning of the term human dignity and in the definition and position of human rights in a given culture; at present, the universality principle demands that the human rights articulated in the Universal Declaration of Human Rights<sup>107</sup> be recognized and embraced as fundamental and inalienable. Whether or not human dignity is perceived as a personal or community experience, it does appear to lie at the heart of all nations' claims of both the granting and imposition of rights and duties. Whichever route one takes to arrive at the destination of rights, privileges, or duties, one can find dignity, in one form or another, as a critical guiding principle.

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104. Muntarbhorn, *supra* note 100.

105. *Id.*

106. However, it is important to note that the Vienna Declaration, like all United Nations declarations, is not a legally binding document and is merely a morally persuasive declaration of principles. Additionally, in the face of unanimous approval, many of the nations that approved the document also registered formal reservations and disagreement with select words or passages.

107. Universal Declaration, *supra* note 53.

## IV. CONCLUSION

Where does all this leave us? What of the Communist position which asserts that no "rights" are inherent or inalienable and that free expression will be regulated and may exist only so far as it benefits the community? And what of the feminist deconstructionist position that maintains that the right to freedom of expression, while correctly an inherent right of the individual, is not inalienable, and exists for the purpose of improving the shared social experience of life and the community? Who can say that the individual should be more important than the community, and that personal dignity and free expression are not only inter-connected, but in fact are integral to the personal and emotional integrity of the human being; or, as Justices Holmes and Brandeis maintained, such ideals are integral to the search for truth on the path to happiness and the "good life" -- the moral and fulfilled life?

C. S. Lewis offers one argument. According to the tenants of Christianity, human beings live forever in the sense that they possess an immortal soul. No community or nation can claim greater importance than the individual human being because all communities or nations exist only for a moment in comparison with the individual's "forever."<sup>108</sup>

Christianity asserts that every individual human being is going to live for ever . . . . If individuals live only seventy years, then a state, or a nation, or a civilisation, which may last for a thousand years, is more important than an individual. But if Christianity is true, then the individual is not only more important but incomparably more important, for he is everlasting and the life of a state or a civilisation, compared with his, is only a moment.<sup>109</sup>

Regardless of whether one is Christian, this argument cuts at the heart of the debate over a right to freedom of expression: the tension between the right and dignity of the individual versus the well-being of the state.

In the United States we choose the individual over the state so

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108. C. S. LEWIS, *MERE CHRISTIANITY* 73 (1952).

109. *Id.*

that the autonomy of the individual to be free from government restraint is paramount. The individual must be free to express him or herself and to participate as a vital member of the democratic society. However, the individual's interest in autonomy, when taken to an extreme, can become a danger to the national interest and the community good. This is because the individual, who has the freedom to choose, can exercise his or her freedoms for the good of himself or herself *and* for the good of the community, or he or she can exercise freedom selfishly, for the purposes of hedonism or personal greed. When the individual, whose freedoms are protected by the First Amendment or Article 19, pursues hedonistic goals, for example, for the purpose of profiting from the production of pornographic materials or for the purpose of selfishness or fear or hate, as with the expression of racist opinions, and when that individual has little or no regard for the good of the community, then all of society suffers and the free expression right begins to be gutted of its substantive value. Ultimately, like a lung without air, democratic society, *unsupported* by the autonomous and free, but instead, the hedonistic and greedy, may itself approach destruction. As Charles Taylor notes, "the individual has been taken out of a rich community life and now enters instead into a series of mobile, changing, revocable associations, often designed merely for highly specific ends. We end up relating to each other through [a] series of partial roles."<sup>110</sup> These partial roles by which we now relate to each other diminishes each of us as it diminishes society as a whole.

Therefore, naked freedom of expression, without some common sense or good community sense infused into it, ultimately will fail to protect the individual as a member of the community, by its total disregard for the needs of the society. Personal dignity will not be supported if the individual must fight and claw for a safe haven in an otherwise obliquely autonomous and self-serving culture. Thus, while freedom of expression is essential to human dignity, additionally, for the ultimate good of the individual as a member of society, such freedom must be exercised responsibly and with a recognition of the integral relationship the autonomous self has with the greater society.

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110. CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF MODERN IDENTITY* 502 (1989).

Thomas Mann's *Magic Mountain*<sup>111</sup> which tells the story of a man who is entirely self-involved and unitarily focused on fiercely preserving his personal autonomy and freedom provides an illustration of this point. The main character gradually disintegrates, falling into a mental depression and obsession, with his own thoughts and beliefs. As he attempts to find the cure in a sanitarium along with other similarly afflicted individuals, his world is circumscribed by the confines of his own body and its day-to-day needs. He is unable to leap across the boundary of the physical self or establish a relationship with the potentially far-reaching creativity of his mind. It is only with the outbreak of World War I that he and his fellow sanitarium residents begin to look beyond themselves to the larger world, and even more importantly, begin to experience a sense of connection with their community.

Taylor describes the condition thus:

[O]ur normal understanding of self-realization presupposes that some things are important beyond the self, that there are some goods or purposes the furthering of which has significance for us and which hence can provide the significance a fulfilling life needs. Total and fully consistent subjectivism would tend towards emptiness: nothing would count as a fulfillment in a world in which literally nothing was important but self-fulfillment.<sup>112</sup>

If, however, the autonomous individual decides, as he or she has the freedom to do, not to act responsibly, then the question becomes whether the state should act to *enforce* responsibility into the exercise of free expression for the protection of society as a whole. This paper argues that it must not. Since much of life and existence seems to operate in a cyclical manner, it is safe to predict that at the point where unabashed autonomy begins to gravely crush democratic society, there naturally will be a counter-expression to this phenomenon -- an affirmative expression of anti-selfishness -- which again will nourish and rejuvenate the body polity. We have seen this in our own American society after the prosperity-motivated 1950s, during the communitarian late 1960s, and then again, briefly, during

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111. THOMAS MANN, *THE MAGIC MOUNTAIN* (Harold Bloom ed. 1986).

112. TAYLOR, *supra* note 110, at 507.

the late 1980s in response to the self-centered me-generation of the late 1970s and early 1980s.

In conclusion, freedom of expression, regardless of one's culture, regardless of one's country of citizenship, and regardless of national borders, is an integral element of human dignity which itself is critical to the human experience. Without freedom of speech one cannot truly express the unique self that exists within each of us and that makes us distinctly who we are. Furthermore, the dangers to each individual that will result from court or government intervention outweigh the benefits to society and indeed, by threatening individual autonomy and free speech, ultimately such intervention will threaten the freedom of the society itself. Likewise, non-self-regulated free expression creates dangers for the community, but history has shown that certain built-in regulatory mechanisms of human nature tend to counter these destructive potentials. Therefore, freedom of expression must be free, for the good of human beings as autonomous individuals *and* as members of their community, and regardless of frontiers.