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The ethics of enforcement: human rights-based policing in duty-oriented societies

La ética de la aplicación de la ley: la vigilancia policial basada en los derechos humanos en sociedades orientadas al deber

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The ethics of enforcement: human rights-based policing in duty-oriented societies

La ética de la aplicación de la ley: la vigilancia policial basada en los derechos humanos en sociedades orientadas al deber

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Abstract: This article examines the tension between rights-based policing and duty-based morality. Liberal democracies, concerned for individual autonomy, procedural safeguards, and encroachment by the state, continue to create tensions with morality rooted in relational duty and collective ethics. In particular, non-Western societies often conceptualize justice in terms of social harmony and duty, representing justice shaped by a cultural context. Through

multidisciplinary theory and comparative cases, this article shows how the imposition of rights-based frameworks results in cultural resistance. The paper discusses informal justice systems. Therefore, on the one hand, it explores the promise and peril of hybrid justice models. Accordingly, on the other hand, it proposes a more sophisticated or nuanced conceptualization that respects cultural contexts, without undermining the universality of core human rights protections.

Keywords: Human rights universalism, rights-based policing, duty-based ethics, legal pluralism, cultural relativism.

Resumen: Este artículo examina la tensión entre la vigilancia policial basada en los derechos y la moral basada en el deber. Las democracias liberales, preocupadas por la autonomía individual, las garantías procesales y la injerencia estatal, siguen generando tensiones con la moral arraigada en el deber relacional y la ética colectiva. En particular, las sociedades no occidentales suelen conceptualizar la justicia en términos de armonía social y deber, representando una justicia moldeada por un contexto cultural. Mediante teoría multidisciplinaria y estudios de caso comparativos, este artículo muestra cómo la imposición de marcos basados en los derechos genera resistencia cultural. El trabajo analiza los sistemas de justicia informal. Por lo tanto, por un lado, explora las ventajas y los riesgos de los modelos de justicia híbridos. En consecuencia, por otro lado, propone una conceptualización más sofisticada y matizada que respeta los contextos culturales sin menoscabar la universalidad de la protección de los derechos humanos.

Palabras clave: Universalismo de derechos humanos, modelo policial basado en derechos, ética basada en el deber, pluralismo jurídico, relativismo cultural.

1. Background

Policing models based on human rights-based framework have increasingly emphasized values such as transparency, accountability, and the safeguarding of the rights of the individual. These models spring from international human rights law, and the theory of liberal democracy, and prevail with an approach to law enforcement that takes individual rights, equality, and the prevention of state abuses into consideration. However, this model of rights-based policing presumes that communities share a moral understanding of something like individualism, which fails to establish a common moral ground in distinctly morally plural societies.

In many societies the existing moral structure prioritizes duties over rights, particularly those shaped by collectivist traditions, religious law, or customary norms. In these communities, the interest does not tend to lie in what is owed to an individual by the state or society but rather what is owed to others, elders, God or religious authorities, or community, or merely one's family. For instance, Confucian, Islamic, Hindu, and many African communitarian worldviews emphasize obedience, social harmony, and moral conduct based on one's social role rather than the assertion of personal entitlements (An-Na'im 1990; Tu 1993).

This difference between liberal rights discourse and duty-based moral systems highlights a broader philosophical tension that animates global discussions of justice and legitimacy in relation to the proper order of social relations. It raises even more serious questions about the legitimacy of reform motivated externally, and under what conditions policing can remain culturally embedded and normatively defensible. It is important to note at the outset, however, that rights-based and duty-based frameworks should not be understood as hermetically sealed, mutually exclusive systems. Rather, they represent identifiable tendencies along a normative continuum upon which different societies are differently positioned, and along which the same society may move over time (Donnelly 2013). Customary duty-oriented societies, for instance, often retain significant space for obligations owed by the community to the individual, even where individual rights claims are not formally articulated, whereas certain religiously grounded duty-based systems may be considerably more demanding of individual obligation without a corresponding architecture of individual entitlement (An-Na'im 1990).

2. Problem statement

This paradox between universal rights and local duties exists at the heart of this paper. Can rights-based policing be meaningfully implemented in societies where moral legitimacy comes from fulfilling relational obligations rather than asserting individual rights? What happens when policing reforms are inspired by international norms are introduced in settings where moral legitimacy is measured not by legal equality, but by fulfilling one's duty towards others?

The imposition of rights-based models in culturally diverse societies often produces resistance, not merely due to institutional constraints, but because of fundamental moral misalignments. This resistance is commonly interpreted as legal imperialism, undermining the legitimacy of reform efforts and alienating communities from the very institutions meant to protect them. It must equally be acknowledged, however, that resistance to rights-based frameworks does not always arise from sincere moral difference alone. At times, such resistance is driven by the deliberate interests of those who benefit from the existing distribution of power, such as elders, patriarchal authorities, or political elites for whom the language of cultural preservation functions as a shield against accountability (Donnelly 2013; Mutua 2001). A complete analysis of the legitimacy of policing reform must therefore distinguish between resistance rooted in genuine normative pluralism and resistance rooted in the protection of privilege.

3. Objective

This article explores the underlying ethical and moral foundations of rights and duties, and how those moral systems shape both theoretical and operational models of policing. It examines case studies from across the world in which cultural resistance to international human rights principles has manifested. It also assesses informal justice mechanisms like jirgas, panchayats, and customary courts that continue to function with significant social legitimacy, even when their practices contradict international human rights standards (Baxi 2010).

The objective is not to advocate for the supremacy of either rights or duties, but to critically examine the conditions under which policing reforms can be both culturally legitimate and normatively sound. It pursues to identify reform strategies that attempt to balance universal

human rights principles with culturally rooted moral systems, without compromising either.

4. Literature review

This literature review explores the very foundations that shape policing models across culturally diverse societies. It combines classical philosophical traditions with legal codifications, and recent empirical research to illuminate the tension between rights-based and duty-based approaches to justice. It is organized thematically to reflect the interdisciplinary nature of the research and to establish a theoretical foundation for analyzing the legitimacy of policing across moral traditions.

4.1. *The liberal conception of rights: individualism and autonomy*

a) ORIGINS IN ENLIGHTENMENT RATIONALISM

The ongoing idea of individual rights first emerged in the Enlightenment period. It was when philosophers such as John Locke, Jean-Jacques Rousseau, and Immanuel Kant articulated the idea of a society that is founded on the fundamental human dignity and liberty. Among them, Locke proclaimed that people by birth possess 'natural rights' to life, liberty, and property, all of which governments must uphold (Locke 1988). Rousseau put forth his idea of social contract, where individuals consent to be governed but in exchange for protection of these rights (Rousseau 1968). Kant refined the topic of rights, but he viewed the rights of individuals through the lens of rational autonomy and moral obligation. He argued that people should always be held in respect for who they are and, therefore, should never be used for the purposes of someone else (Kant 2012). Which, of course, relates directly to the concept of rights in modern understanding. This individual-focused position is fundamental to the current political and legal doctrines that eventually formed the basis of constitutionalism, liberal democracy, and the responsibility of the modern state's obligation to protect individual liberties. It is important to note, however, that the concept of human dignity, which is often treated as a distinctively enlightenment inheritance, predates these thinkers considerably. Christian natural law theorists such as Thomas Aquinas grounded human dignity the image of God present in every

human being, from which flowed obligations of justice that both rulers and subjects were bound to observe (Finnis 1980). Similarly, Islamic jurisprudence had long recognized the concept of human dignity and the protection of individual life, intellect, lineage, religion, and property under sharia law (Auda 2008). This broader genealogy of right-adjacent thinking cautions against any reading of IHRL as exclusively a Western or Enlightenment invention.

b) LEGAL CODIFICATIONS OF RIGHTS

The Universal Declaration of Human Rights, which was codified in the aftermath of World War II, was a direct product of similar enlightenment thinking. For instance, it declares that “all human beings are born free and equal in dignity and rights” (United Nations General Assembly 1948, art. 1) and that “everyone has the right to life, liberty and security of person” (United Nations General Assembly 1948, art. 3), which carries the same ideology. Even the International Covenant on Civil and Political Rights and the European Convention on Human Rights built on the same liberal premise that any mode of justice must also be organized around preventing the state from abusing individual rights.

In recent times, scholars have widened this debate by examining how legitimacy is constructed in practice. For instance, George Klein’s ethnographical study demonstrates that police legitimacy is not simply a function of legal authority, but rather it is negotiated through procedural justice and community engagement. Officers time and again act as “street-level bureaucrats,” administering moral duty rather than enforcing abstract rights (Klein 2024). Which suggests that even within liberal framework, legitimacy is dependent on the relational dynamics and perceived fairness, not exclusively on codified rights.

4.2. *Duty-based ethics: an overview of non-Western moral systems*

a) CONFUCIANISM: HIERARCHY, HARMONY, AND RITUAL OBLIGATION

The Confucian moral tradition, which is heavily influential across East Asia, grounds justice not in rights but in the fulfillment of social roles and obligations. Central to Confucianism is the concept of *li* (ritual) and *ren* (humaneness), both of which determine behavior through a comprehensive and interconnected framework of family and social moral

obligations. Confucius teaches that the individual exists within a network of relationships, such as parent-child, ruler-subject, elder-younger and that morality ultimately lies in behaving appropriately within each relationship (Tu 1993). As Daniel Bell (2006) argues Confucian societies often see the family and community, not the individual person, as the basic moral unit. Rights, if they even exist in this ideology, are subordinate to the effective harmonious functioning of society. Social harmony is given priority over adversarial justice. In this context, policing functions as a mechanism for preserving social order and reinforcing moral conduct rather than protecting individual rights.

b) *Islamic thought: divine duties and collective morality*

In Islamic legal traditions, justice is derived from God, and individuals have obligations or duties to God and the community. *Sharia* emphasizes obligations, but it does not emphasize rights in the way liberalism emphasizes rights. The basis of *sharia* law is as simple as obligations to pray, give charity (*zakat*), and uphold social justice (*adl*). While Islam does recognize certain rights like *haqq al-nafs* (the right of self), they are found within the framework of duties to God and the community (An-Na'im 1990). Furthermore, under *maqasid al-sharia* (the intents and purposes of Islamic law), justice is understood through preserving religion, life, intellect, lineage, and property, and each with corresponding duties for the individual and society (Auda 2008). The term right is not autonomous; rights are derived from God and explained through the Quran and Hadith (Kamali 2008, 89–92). In practice, this ultimately manifests itself as policing for moral behavior, as described in the case of religious police patrolling society in Saudi Arabia (Cook 2000, 412–415), or community devoted to policing through religious mediation as seen in parts of Indonesia and Nigeria. Justice, in this sense, is achieved by fulfilling or performing the roles that God requires of individuals, and not by demanding personal rights (Abou El Fadl 2001, 72–75; Hallaq 2004, 156–160).

c) HINDU DHARMA: SOCIAL ROLE AND COSMIC RESPONSIBILITY

Hindu philosophy on another hand presents the concept of *dharma* that is both about obligations owed to others, and the notion of cosmic order (Kane 1930, 1–5). In this philosophy each person is born into a social group (*varna*) and life stage (*ashrama*) and is morally

obligated to fulfill the duties appropriate to that status (Dumont 1980, 66–71; Sharma 2000). Rights are not rejected, but they are deeply rooted in the hierarchical obligations (Davis 2010, 89–93). Justice in this expression is a matter of balance and karma, rather than legal equality. Law (*dharmashāstra*) has codified obligations rather than an individual's claims on another individual, thereby affirming caste distinctions and roles related to gender (Lubin 2007, 93–122). Even though India's Constitution has liberal rights preserved into it, customary practices rooted in dharma continue to construct policing norms, especially in rural and caste-bound environments (Jauregui 2016, 78–82).

d) AFRICAN COMMUNITARIAN ETHNICS: UBUNTU AND RELATIONAL PERSONHOOD

African communitarian traditions, specifically the concept of *Ubuntu*, which means “I am because we are”, present justice as collective (Ramose 1999, 49–52). Under which personhood is not something inherent to humans but is something achieved through harmonious association with others and moral responsibility (Mokgoro 1998). Wrongdoing is not limited to the breaking of a law but rather the breaking of relationship, and requires reparation through reconciliation, not through punishment (Tutu 1999, 34–38). *Ubuntu* rooted in restorative justice models have been incorporated to address wrongdoing in the post-apartheid South Africa's Truth and Reconciliation Commission (Wilson 2001, 9–12), as well as village courts in Malawi and tribal systems in Botswana (Englund 2006). This principle also touches on policing models focused on relationships, communal healing, and relational accountability, more than adversarial legalism.

Roni Factor and Yoav Mehozay's recent work propagated the typology of four normative value systems: religious–traditional, liberal, republican–communitarian, and ethno-national systems to explain how cultural orientations influence the construction of police legitimacy (Factor and Mehozay 2023). Their research also highlights the necessity of culturally responsive policing models.

4.3. *The Universalism dilemma: when rights meet roots*

Even if human rights law is aimed to reflect a cultural neutrality across the world, the philosophical center of human rights is deeply rooted in Euro-American liberalism. Human rights have faced this

criticism several times over the course of time, with scholars like Makau Mutua depicting human rights as a “civilizing mission” that creates a binary triad of the “savage” non-western actors, the “victim,” and the “savior” i.e. western actors (Mutua 2001). It’s failure to account for different social contexts has led to cultural resistance and accusations of legal imperialism, particularly in the areas where traditional duties govern family law, gender relations, and community conduct. Scholars such as Abdullahi An-Na’im have argued persuasively, however, that the proper response to this critique is not to abandon rights but to re-root them in the moral vocabularies of different traditions, demonstrating that analogues of dignity, fairness, and protection from abuse are present across cultures even where they are not framed in the language of individual entitlement (An-Na’im 1990). This approach of internal cultural legitimation, rather than external imposition, offers a more sustainable foundation for rights-based reform than either a universalism that ignores context or a relativism that capitulates local power.

5. Methodology

5.1. *Research design*

This study uses a qualitative and literature-based research design. The aim of this design is to explore the tension that exists between rights-based and duty-based policing models across societies which are culturally diverse in nature. The research implements a multidisciplinary framework that integrates legal theory with moral philosophy and comparative policing studies to examine how different moral systems help in shaping the legitimacy and functionality of law enforcement institutions.

Rather than using an empirical fieldwork methodology, this study uses theoretical analysis and comparative case inquiry. The reason why this approach is used, is to examine the philosophical basis and implications of policing reforms. Because this study is highly interpretive in nature, it allows for essential engagement with different doctrinal texts, cultural traditions, and international legal instruments. This approach further enables the identification of underlying faults and the conditions under which reform strategies may succeed or fail. The analysis proceeds on the understanding that rights-based and duty-based moral frameworks are best treated as poles on a normative continuum rather than as binary opposites, even as the paper identifies and analyses tendencies that cluster around those poles for analytical clarity.

5.2. *Literature review process*

The literature review underwent a systematic yet iterative process that aimed to identify, evaluate, and synthesize important sources across fields. The literature review consisted of the search of targeted key terms based on various databases including JSTOR, HeinOnline, SSRN, and Google Scholar. The search terms included combinations of the following terms, "rights-based policing," "duty-based ethics", "legal pluralism," "human rights universalism," "form of justice," and "cultural legitimization."

Selected sources were determined based upon standards of scholarly rigor, relevance to the research questions, and further theoretical or practical debates within the literature. Notably, the review prioritized high impact law journals, interdisciplinary journals, and texts that assessed the universalism-relativism debate related to theoretical human rights discussion.

The review incorporated both foundational texts and recent developments, to ensure that both historical depth and contemporary relevance has been maintained. Finally, to ensure pluralistic representation the literature review emphasized sourcing literature from the Global South, and alternative worldviews in opposition of Eurocentric legal paradigms.

5.3. *Limitation of methodology*

Because this is strictly desk-based research, it is restricted by its reliance on secondary sources only. Since there is an absence of primary data, such as interviews with stakeholders, surveys, or observation of the work in the field, it limits the ability of this research to assess real-time community responses or institutional dynamics.

There are also constraints associated with the study's scope as it is limited by the availability and accessibility of documented practices of informal justice systems. Interpretations of non-Western moral systems are facilitated heavily through academic literature, which may introduce framing biases.

Despite these limitations, the methodology adopted for this research is appropriate for the study's conceptual and normative focus. Future research should build on this foundation through empirical fieldwork, stakeholder engagement, and participatory observation to capture lived experiences and institutional nuances.

6. Moral frameworks and policing models

6.1. *The role of policing in traditional societies*

a) THE DUTY-CENTERED POLICE MODEL

In many cultural settings where social obligation is prioritized over individual rights. In those settings, policing is more frequently seen as an extension of social duty (Government of Japan 2016; People's Action Party 2019) rather than an instrument to enforce individual rights. Law enforcement there is usually framed as a social responsibility, with a fundamental emphasis on maintaining public harmony, fulfilling moral obligations, and reinforcing collective norms (Shan 2014, 123–140). This policing model conveys the idea that preserving collective welfare is the primary concern and that individual welfare is expected to, at times, yield to collective needs of the society. Accordingly, police are often seen not as the guardians of individual rights, but as moral agents tasked with upholding culturally sanctioned duties of society as a whole.

b) THE FAMILY AS THE FIRST LINE OF DEFENSE

In certain traditional societies, particularly those that follow a patriarchal culture, the family head serves the role of the primary institution for policing and social control. The role of police as an institution is secondary to familial oversight, with elders or heads of families are expected to enforce order within their home (Pkalya et al. 2004, 89–95). The argument made is based on the belief that individual rights are best protected through interpersonal relationships and obligations to one's kin and elders. A concept that can be used to clarify this example would be how the concept of *Ubuntu* influences family and community-based policing in African communities (Panning 2024). In an *Ubuntu* type of paradigm, surrogates or elders may work as mediators to address any disputes within the community while ensuring that the conduct of individuals aligns with social expectations (Panning 2024). This model reflects an interpersonal conception of justice, where social unity is maintained through interpersonal accountability rather than any formal legal interference.

c) RELIGIOUS POLICING AND MORAL ORDER

In any society where religion is a prominent source of moral and legal norms, police forces may eventually act as an extension of divine

law that is derived from religious texts. In this context, policing is not simply a legal function, rather it becomes a sacred duty to enforce divine law and protect religious belief. Examples include the role of religious police in Saudi Arabia, whose primary duty is to enforce the observance of Islamic law (Commins 2015, 66), or the religious courts that function in some parts of Israel (Bentwich 1948, 33–46) and India (Rani 2014, 129–139), which address matters of family law and personal conduct according to religious principles. In such societies, the police's authority is primarily linked to their duty of protecting the moral purity of society. This unusual blend of legal and theological authority complicates the application of secular human rights norms, particularly in areas of gender, sexuality, and personal status law.

6.2. *Rights-based policing: the Liberal model*

a) THE LIBERAL STATE AND POLICE AS PROTECTORS OF RIGHTS

Rights-based policing represents a shift in the ideology of policing from duty-based models. This approach originates from liberal political theory that views civil liberties and personal freedom as the foundation of justice. In a liberal democratic setting, the role of the police is primarily to protect the citizens' rights to life, liberty and property¹. The model assumes that the primary role of the police is to intervene in order to resolve conflicts that involve an individual's rights², and limiting their role only to safeguarding individual freedoms, rather than enforcing moral duties of the society³. Police are to act as neutral agents of law enforcement with the obligation to act impartially to prevent individuals from experiencing harm, and an obligation to ensure citizens can exercise their rights without concerns of interference (Skolnick 1993).

b) POLICE ACCOUNTABILITY AND THE RULE OF LAW

A rights-based approach to policing model is inherently linked to the principles of accountability and transparency (Walker 2014, 45–67). In Modern democratic systems mechanisms are in place with the purpose

¹ *Warren v. District of Columbia*. 1981. 444 A.2d 1 (D.C. Ct. App.). *DeShaney v. Winnebago County Department of Social Services*. 1989. 489 U.S. 189.

² *Town of Castle Rock v. Gonzales*. 2005. 545 U.S. 748.

³ *Lawrence v. Texas*. 2003. 539 U.S. 558.

of holding police forces accountable to the law. Some of these mechanisms do include independent oversight bodies, judicial review, and public accountability through elected officials⁴. In a liberal society, police actions are dictated by strict protocols that are in place designed to uphold due process and proportionality. It ensures that interventions when made are lawful and justified in nature. Police must function within legal norms that protect individuals' rights, particularly vulnerable and marginalized people (Bowling and Phillips 2007, 936–961). From a legal point of view, this approach prioritizes procedural fairness. It further ensures that police powers are exercised only when it is necessary and is being done with minimal interference with individual rights (Tyler 2003, 29–53). The legitimacy of policing, in this model, comes from legal rationality and social accountability rather than moral conformity.

6.3. *Police in value-diverse societies*

a) MULTICULTURALISM AND THE CHALLENGE OF POLICING

In multicultural societies, police must create an equilibrium between enforcing the law in an evenhanded manner and taking into account the differences in moral codes and/or laws⁵. Police agencies are required to implement a community partnership model, which includes engaging in cultural competency training and collaborating with individuals in the community in order to build legitimacy with the members of the community (Chan 1997). For instance, in Canada, community liaison officers work with Indigenous, Muslim, and immigrant communities to create culturally responsive forms of policing and to address mistrustful relationships formed due to the oppressive and violent past (Wortley and Owusu-Bempah 2011, 395–407). This model of engagement from police reflects a shift from enforcement, where legitimacy has to be earned through dialogue, representation, and procedural fairness.

b) THE ROLE OF POLICE IN SOCIAL INTEGRATION

In societies that frequently receive migrants or are in post-conflict situations, police are often seen as integration agents providing

⁴ *R (on the application of Commissioner of Police of the Metropolis) v. Police Misconduct Tribunal*. 2021. EWCA Civ 82.

⁵ *R. v. Williams*. 1998. 1 S.C.R. 1128 (Supreme Court of Canada).

information about civil rights and the rule of law to newcomers. In Germany, for instance, there are specialized police-based outreach units whose purpose is to help support the refugee communities, with a particular focus on prevention of marginalization and dissemination of rights and obligations (Kaste 2018). In post-apartheid South Africa, it was seen that police reforms were made aimed at transforming the South African Police Service (SAPS) from a coercive and authoritarian tool to a community-oriented police service supporting democratic values (Phillips 2017). These examples rightfully highlight the potential for reimagining the role of a police institution to act as promoters of inclusion and civic integration, especially in value diverse contexts.

c) POLICING MINORITY RIGHTS AND DUTIES

Conflicts frequently occur when state-enforced human rights clashes with the opposing cultural or religious obligations (Parekh 2001, 109–115). For example, liberal protections for sexual and gender freedoms may conflict with customary practices for family honor, religious modesty, or communal discipline to create social order. When these conflicts arise, police are caught between enforcing universally adopted legal standards of justice and weighing them against community-based moral expectations. For example, in France, laws prohibiting religious symbols in schools are seen by many in the Muslim community to be targeting Islamic identity and violating religious duty (Bowen 2007). In India, personal laws, contingent on religious affiliation, further complicate policing practices, especially in family law regarding marriage, custody, or inheritance (Agnes 2011, 45–78). Police are routinely criticized for being either too lenient or overzealous depending on the political moment and the majority group's religious dynamics (van der Veer 2004).

7. Normative conflicts in policing reform

Bringing rights-centered policing to communities operating with duty-centered moral systems raises difficult normative challenges. When the laws of international human rights enter communities in which there are entrenched moral systems typically focused on the collective good or collective duty, there is likely to be a clash. In these situations, local authorities and police forces will be caught between two competing moral frameworks. This section uses comparative case

studies from Nigeria, Egypt, and India to explore these tensions and demonstrates the operational and moral dilemmas police forces experience in the face of competing conceptions of justice.

7.1. *Nigeria: customary law vs. human rights enforcement*

In Nigeria, there has been records of considerable conflict between customary law and international human rights laws, creating challenges for police officers responsible for policing human rights there⁶. Customary laws in several Nigerian communities focuses much on communal harmony, the authority of ancestors, and fulfilling social duties (Elias 1956). In contrast, international human rights law has always emphasized individual rights.

For example, trying to address female genital mutilation, a widespread practice in some communities in Nigeria, faced significant backlash (Shell-Duncan et al. 2017). Local authorities associate female genital mutilation with their cultural heritage, viewed police investigations and interventions as implementing foreign identities and values. The Nigerian national police faced challenges trying to enforce national law from the human rights perspective in these communities and build positive relationships with them (Alemika 1999). Unfortunately, interventions did not succeed in changing cultural norms, while further instilling a divide between communities and law enforcement.

In these contexts, local populations often view the enforcement of human rights as an infringement on cultural identity (Nwauche 2010, 37–63). Police forces in these situations were seen as external actors. This undermined their legitimacy and ability to effectively enforce the law. Their inability to partner with local leaders made matters even worse, contributing to a heightened resistance against policing strategies. This case demonstrates the necessity for reform strategies to be culturally embedded and that engage local moral authorities while also respecting fundamental human rights. Crucially, however, the failure of top-down enforcement in Nigeria should not be read as a vindication of female genital mutilation or other practices that inflict direct bodily harm on individuals, particularly children and women. It is instead a failure of strategy, not a failure of the underlying rights norms.

⁶ *Mojekwu v. Mojekwu*. 1997. 7 NWLR (Pt 512) 283 (Nigerian Court of Appeal).

7.2. Egypt: gender justice and Sharia-based policing

In Egypt, the role of *Sharia* law in shaping the legal and social context is profound. Rights-based policing there focused on supporting women's rights often comes into conflict with cultural perspectives that uphold traditional interpretations of Islamic law (Berger and Sonneveld 2010, 51–88). The rights of women to bodily autonomy, protection from domestic violence, and equality before the law, are often in conflict with dominant masculinities that view a woman's value primarily within the family structure (Al-Sharmani 2013). While international human rights frameworks support women's rights and gender-based violence, local religious leaders and communities often view these efforts as an infringement on their religious beliefs. When police respond to situations of domestic violence or attempt to protect women from early marriage, the police are often accused of undermining the religious framework.

In certain examples, police officers in Egypt entered the cultural conflict, attempting to juggle human rights with the philosophy of the communities (Cairo Misdemeanor Court 2020). Conservative elements in society may assert that outside interventions advocating on behalf of women's rights represent western impositions of Islamic values, and thus, police agencies are stuck between a rock and a hard place. The idea of imposed norms generates opposition, especially in communities with heavily entwined religious identities and moral authority. The Egyptian example helps illustrate that gender justice initiatives must navigate theological legitimacy and cultural appropriateness as to not be dismissed as legal imperialism.

7.3. India: caste, custom, and rights-based policing

Policing in the cases concerning caste-based discrimination in India offers a unique challenge to those who advocate for rights-based policing. The Indian Penal Code, alongside specific acts pertaining to the protection of civil rights, criminalizes discrimination on the basis of caste⁷. However, traditional caste-based customs continue to exist in rural communities. Practices, such as untouchability and hierarchical

⁷ India. 1860. *Indian Penal Code*. Act No. 45 of 1860. s. 153A.

India. 1955. *Protection of Civil Rights Act*. Act No. 22 of 1955. s. 3. India. 1989. *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*. Act No. 33 of 1989, ss. 3(1)(x), 3(1)(xi)

discrimination, remain well-established in those communities (Mendelsohn and Vicziary 1998). The national laws and policing efforts aimed at enforcing the rights of marginalized groups often meet heavy resistance from local communities, who consider this caste system as an integral part of their social fabric (Human Rights Watch 1999).

For example, when police forces respond to incidents of caste-based discrimination or violence, they face hostility from local, upper-caste communities who are concerned that such policing intervention is a challenge to the existing social order (Supreme Court of India 1993; Bombay High Court 2010; Teltumbde 2010). This conflict between the rights of individuals granted under Indian law and the cultural beliefs surrounding caste continues to be a challenge to Indian policing efforts. For Indian law enforcement, the challenge emerges not only in affirming anti-discrimination law, but also in re-establishing trust with historically marginalized groups. Dalits, for example, have been found to be socially alienated from police or at least do not feel that law enforcement is able to safeguard them or their rights (Supreme Court of India 2018). Therefore, when rights-based approaches are offered in these societies, they are viewed as a type of intervention by individuals with limited insight of the complexities of local caste hegemonies, leading to mistrust and resistance from others. This case study from India highlights the importance of culturally literate policing and engagement with community-specific histories of exclusion.

8. Resilience and relevance of customary policing models

8.1. *Why people trust informal justice systems*

Due to their cultural embeddedness and continuity over time, informal justice systems may continue to have a strong and important claim to trust in many communities. These systems are legitimate because they are seen as versions of dispute resolution consistent with the values, norms, and traditions that societies have relied upon for generations (Merry 1988, 869–896). In a number of areas, tribes, village panchayats, or religious courts are thought to have the most legitimacy in resolving disputes, as they reflect the shared history and customs of the community (Galanter 1981, 1–47).

These systems are also uniquely personalized, relying upon someone with a certain degree of authority or respect from the

community to decide a quote or to provide an explanation of why a particular result was appropriate in the situation. For example, in tribal societies, the members have collective faith in the reasoned basis of decisions made by elders or chiefs, just as those elders and chiefs have a vested interest in resolving disputes fairly, while at the same time maintaining harmony and a good social world for their community. This type of local ownership creates a sense of procedural legitimacy to the result of conflict resolution or the moral correctness of what the elders or authorities believed was fair (Fikentscher 1991).

In addition, these systems are usually more available to individuals who may not have the capacity or knowledge to engage with formal systems of justice. Accessibility is especially salient in rural or other marginal contexts where legal institutions are either corrupt, ineffective, or simply far away. For example, in India, for many rural communities, panchayats (village councils) are the principal means of justice, not because these are the culturally preferred means but because they are available and cheap (Konoorayar 2014). Informal systems often allow for local solutions to local problems and provide a level of legitimacy, which is often missing in formal system of the state. Because informal systems are local, accessible, and culturally familiar, they also become the preferred modes of operation within communities that generally feel underserved by formal legal systems.

8.2. *Benefits of informal justice systems*

a) SPEED AND EFFICIENCY

Informal justice systems exist due to their ability to produce results much quicker and more responsively than formal legal systems. Formal legal systems, depending on the circumstances, may take months or even years, constrained by formal legal proceedings of a court (Tamanaha 2011, 1–17). In many cases, people cannot afford to wait months or years for a court decision, particularly as the urgency of the dispute increases due to the nature of the dispute. For instance, in Bangladesh, *shalish*s (village councils) are a common type of informal justice system that people use to resolve disputes, such as property disputes, family issues, or theft (Hoque and Zarif 2020, 35–50). There is no formal legal process, so *shalish* is a viable alternative because the formal legal system can be very slow or overburdened (Hoque and Zarif 2020, 35–50). Since a *shalish* can sometimes call a meeting and resolve an issue in one day, it is a much quicker way for everyone to find relief.

People who rely on informal systems do so because the process will be faster than seeking recourse in a state-run court (Chirayath et al. 2005). This efficiency is one of the primary reasons that informal justice remains a preferred choice, despite its potential to contradict formal human rights law. While speed does not guarantee fairness, it enhances perceived legitimacy in contexts where delay equates to denial.

b) CULTURAL ACCEPTANCE AND SOCIAL COHESION

In addition to their speed, informal justice systems are often culturally accepted because they are embedded within the society's historical and cultural framework (Merry 1988, 869–896). Many communities feel more comfortable using these systems because they follow local customs that have developed over generations. As a result, the findings of tribal elders, religious leaders, or community councils are not merely legal findings, but a means of preserving the fabric of the community. For instance, in many areas in Africa, communities continue to use tribal courts that are run by elders and community leaders. These systems are trusted because they are an extension of the community's identity (Chirayath et al. 2005). In countries like Kenya, where customary law is a form of practice in the rural setting, informal justice is often perceived as the most credible method of resolving disputes (McConkie 2024). These communities often elect the leaders, and these leaders are believed to be attuned, within their local context, capable of making decisions both culturally appropriate and consistent with local value systems.

c) WHY THESE TRADITIONAL SYSTEMS CAN'T BE IGNORED IN REFORM DISCUSSIONS

The normative and institutional imprint of traditional justice systems is deep and enduring. They exist within the fabric of many societies, especially in rural and marginalized places (Tamanaha 2011, 1–17). They are not just alternate means of attaining justice, but are, in many instances, the only means by which an individual interacts with laws and authority. In Africa, Asia, and the Middle East, traditional systems of justice are still central to people's lived experience of justice and social order (Ahmad and von Wangenheim 2021, 228–239; Kaime 2004, 271–273). Any discussion on legal reform, whether it be bringing the traditional justice system into formal state institutions or developing practices within traditional institutions to develop legality in

pluralistic societies, would not be realistic by ignoring or dismissing traditional systems of justice

Lawmakers and human rights supporters can work to reconcile traditional justice systems with international human rights standards by recognizing and valuing their traditional roles. In doing this, a delicate balance will be achieved, in which the law will encapsulate cultural practice but will not sacrifice fundamental rights. Reform must progress through normative translation not by erasing cultural law. To achieve rights-informed cultural practices effectively, we must operationalize rights within a culturally relevant framework, providing legitimacy and protection.

9. Hybrid approaches to justice: bridging universalism and cultural legitimacy

To try to make justice systems more congruent with the experienced moral worlds of diverse communities, some governments and organizations have attempted to adopt hybrid systems, merging rights-based approaches that emerge from international human rights law with duty-based frameworks emerging from local customs (Tamanaha 2011, 1–17). These hybrid experiments have been illustrating the possibilities and challenges of legal pluralism (Griffiths 1986, 1–55). The cases examined below illustrate both the aspiration and the structural difficulty of genuine hybridization, and inform the conditions identified at the close of this section under which hybrid models may more reliably protect individual rights. South Africa, Indonesia, and Jordan, for example, have all engaged, to some extent, in bridging those systems and creating hybrids that honor human rights and ethically adopt cultural practices for justice. These efforts have, however, highlighted how challenging this process can be, especially when local customs or practices are inconsistent or in conflict with the international standard of human rights.

a) SOUTH AFRICA: CUSTOMARY LAW AND CONSTITUTIONAL EQUALITY

Among the most examined cases of this legal incorporation can be found in South Africa. Constitutional reforms following apartheid recognized customary law and gave it equivalent status as common law, provided it did not conflict with the Constitution (Kaime 2004,

271–273). However, the fact of recognizing customary law often came at the cost of women’s rights (Constitutional Court of South Africa 2004). For example, in rural areas, matters of land and inheritance are routinely determined by traditional authorities who would enforce customary law and local norms which arguably violate constitutional principles of gender equality⁸. While the state originally sought to apply a duty-oriented approach, the lack of consistent oversight meant that discriminatory practices persisted under the guise of cultural legitimacy (Oomen 2005, 164–234). The example demonstrates the tension of legal pluralism and substantive equality, particularly when customary authority is exempt from constitutional scrutiny.

b) INDONESIA: ADAT, SHARIA, AND HUMAN RIGHTS

In Indonesia, the government tried to harmonize *adat* (customary) law with human rights, particularly in Aceh, where *Sharia*-based rules were introduced (Republic of Indonesia 2006). While these measures were meant to preserve cultural practices, they resulted in practices such as public caning, drawing criticism for violating human rights protections against cruel treatment (Amnesty International 2016). The Indonesian experience implies that hybridization of traditional and human rights law puts duty to community above individual human rights and can exacerbate inequality, particularly related to gender and minority status. These developments in Indonesia illustrate how hybridization can perpetuate illiberal practices rooted in cultural legitimacy over normative protections.

c) JORDAN: TRIBAL MEDIATION AND GENDERED JUSTICE

Similarly, Jordan’s experience with tribal dispute resolution systems, which emphasize duties to family and community, revealed the difficulty of blending local customs with formal legal frameworks (Furr and Al-Serhan 2008, 17–34). Tribal mediation, encouraged to reduce court backlogs, sometimes undermined women’s rights in family disputes, particularly in cases of domestic violence or “honor crimes” (Johnstone 2015). While these mechanisms were intended to enhance access to justice, they often reinforced patriarchal norms and discouraged victims from seeking formal legal recourse.

⁸ *Shilubana and Others v. Nwamitwa*. 2008. (CCT 03/07) [2008] ZACC 9.

d) LESSONS AND LIMITATIONS OF HYBRID MODELS

To summarize, a pattern of contradiction and complexity arises from these cases. On the one hand, considering duty-based norms can enhance the local relevance of justice processes and facilitate participation (Claassens and Ngubane 2008, 154–183). On the other hand, those same features can create obstacles to reform when local norms may conflict with universal human rights (Claassens and Ngubane 2008, 154–183). At the heart of these tensions is a disagreement between the liberal logic of individual entitlements and the communitarian logic of relational obligations. Both may offer important insights into justice processes, but integrating a co-existent framework raises the level of complexity. Moreover, as noted in these cases, integrating both could lead to revolutionary changes as well as a certain level of ambiguity, selective justice, or even a return to the status quo. The South African, Indonesian, and Jordanian cases collectively demonstrate that, in absence of robust safeguards, hybrid models consistently permit the cultural to override the normative: customary authority displaces constitutional equality, religious enforcement displaces individual protection, and community mediation displaces victims' access to formal recourse. This is not a marginal risk but a pattern, and it demands an explicit acknowledgement that the current record of hybridization, far from representing a promising middle path, reflects a structural tendency for individual rights to be the currency in which cultural accommodation is purchased. Scholars who remain critical of the hybrid approach, including Donnelly (2013) and Mutua (2001), have consistently cautioned that framing cultural accommodation as compromise risks masking the capitulation of rights under the language of pluralism.

Understanding when and how such blending works requires not just technical legal expertise, but a deep sensitivity to the local context, power dynamics, and the lived experiences of those the law is meant to protect. Based on the cases examined, this paper proposes that genuinely rights-protective hybrid models must satisfy at least four conditions: first, a clear hierarchy of norms that treats non-derogable rights as a floor beneath which no local practice may reach; second, participatory reform processes that include, in particular, the voices of those who are most frequently harmed by customary practices, women, minorities, and caste-marginalized persons; third, robust and independent oversight mechanisms capable of identifying and sanctioning the instrumentalization of cultural legitimacy by power-holders; and fourth, a commitment to

what An-Na'im (1990) terms internal cultural legitimation, which seeks to demonstrate that rights-equivalent protections are available within the moral vocabulary of the tradition itself, rather than imposed from outside it.

10. Limits of rights universalism in local contexts

Certain human rights, particularly those of women and religious freedom, conflict frequently in societies where moral authority is based on duty-centered traditions (An-Na'im 1990). This turmoil does not arise from a lack of knowledge or lack of belief in international norms, but rather from a sense of duty towards society rooted in cultural, moral and religious beliefs.

Women's rights, in particular, are often most contested in the areas of marriage, inheritance, and control over their bodies. For example, in Afghanistan, attempts to implement the law prohibiting forced marriages and domestic violence are almost always opposed by tribal elders and religious leaders alike who found these initiatives to be against their traditions of patriarchal authority (Human Rights Watch 2012). The 2009 Shiite Personal Status Law, for example, allowed husbands to withhold sustenance from wives who refused sexual relations (Islamic Republic of Afghanistan 2009, art. 132). Such laws have drawn protests from the international community, but indicate that in Afghanistan, religious frameworks supported norms are prioritized over individual autonomy. Similar conflicts exist over women's rights in Nigeria because of the parallel application of customary law, *Sharia* law, and federal law⁹ (Amnesty International 2012). The coexistence of different legal philosophies leads to contradictory results across jurisdictions, especially related to issues of gender equality and personal status.

Religious freedom also frequently becomes a source of conflict. For example, in Egypt, Christian converts from Islam have suffered both formal and informal oppression despite the constitutional protection of religious freedom (International Christian Concern 2025; Morning Star News 2025; Brink 2025). Courts and bureaucracies frequently deny identity card changes, effectively leaving converts stateless in their own country (Fayez 2025). This administrative denial exhibits a deeper

⁹ *Amina Lawal v. State of Katsina*. 2003. Sharia Court of Appeal, Katsina State, Nigeria, September 25.

normative resistance to religious pluralism, where identity is strictly regulated by communal and theological limitations.

These examples and cases raise an important and persistent question in the human rights discourse: should rights be applied universally, or are there opportunities to adapt or interpret them through locally legitimate moral vocabularies to increase acceptability? Scholars like Abdullahi An-Na'im argue that unless rights are adapted and interpreted through culturally legitimate contexts, they will always emerge as imposed rights and create backlash (Sidahmed 2011). This is an important insight, but it must be carefully distinguished from the position that cultural acceptability can ever justify the violation of non-derogable rights. The internal legitimation of rights is a strategy for their more effective realization; it is not a process by which those rights may be qualified or extinguished. As Donnelly (2013) argues, the universality of human rights does not require cultural uniformity in their expression or enforcement, but it does set an irreducible minimum below which no cultural argument provides legitimate justification. The task, therefore, is not to choose between universalism and cultural legitimacy, but to pursue a rights-protective pluralism that holds both commitments simultaneously, insisting on the floor while allowing diversity in the architecture built above it.

Conclusion

The present study has explored the consequential normative tensions that exist between a rights-based policing model grounded in the liberal democratic tradition and a duty-based moral framework that are common to many tradition-based societies. Even though international human rights framework puts a greater emphasis on individual rights and protection, justice is often understood through the perspective of relational obligations, social harmony, and moral responsibility in societies around the world. These distinctions between the frameworks are not just abstract; they are an essential part of the context in which policing is understood, practiced, and contested.

This study has highlighted it through a creative and multi-disciplinary analysis of philosophical traditions, legal instruments and settled case law. Brief case studies of Nigeria, Egypt, and India, has showcased that the imposition of universal human rights framework very often meet with resistance for a range of reasons. Informal justice

systems, such as the jirga, panchayat, and religious courts, persist not in spite of international law, but because they resonate with local understandings of legitimacy, authority, and justice.

Rather than framing this difference as a binary between universality and relativism, this paper argues that rights-based and duty-based frameworks occupy different positions along a normative continuum, and that the central challenge for reform is not to choose between them but to develop strategies for embedding non-derogable rights within culturally legitimate moral frameworks. Where informal systems provide accessibility, familiarity, and social cohesion, those assets should be engaged, not discarded. But where those same systems systematically exclude or harm individuals, particularly women, minorities, and the socially marginalized, reform must insist upon the floor of rights protection, even as it remains sensitive to context in everything built above it.

In the end, the question is not whether rights or duties should prevail, but how justice can be reimagined in ways that are both normatively principled and culturally resonant. By situating police reform at the intersection of law, culture, and philosophy, this paper invites scholars, policymakers, and practitioners to move beyond universalist prescriptions and toward context-sensitive strategies that embed rights within existing moral frameworks. Only then will policing be something other than a tool for enforcement and be a real vehicle for justice in morally plural societies.

References

- Abou El Fadl, Khaled. 2001. *Speaking in God's name: Islamic law, authority, and women*. Oxford: Oneworld Publications.
- Brink, Lizzie F. 2025. «What it's like to live out your faith as a Christian in Egypt.» *ADF International*. April 9. Accessed October 21, 2025: <https://adfinternational.org/commentary/egypt-christians-religious-freedom>
- Agnes, Flavia. 2011. *Family law: Family laws and Constitutional claims*. Vol. 1, Delhi: Oxford University Press.
- Ahmad, Jawad, and Georg von Wangenheim. 2021. «Access to justice: an evaluation of the informal justice systems.» *Liberal Arts and Social Sciences International Journal* 5(1): 228–244.
- Alemika, Etannibi E. O. 1999. «Police community relations in Nigeria: what went wrong?» Paper presented at the Seminar on the Role and Function of the Police in a Post-Military Era, Lagos, Nigeria.
- Al-Sharmani, Mulki, ed. 2013. *Feminist activism, women's rights, and legal reform*. London: Zed Books.

- Amnesty International. 2012. *Nigeria: Trapped in the cycle of violence*. AFR 44/043/2012. Accessed April 27, 2025: <https://www.amnesty.org/en/documents/afr44/043/2012/en/>
- Amnesty International. 2016. *Indonesia: End caning as a form of punishment in Aceh*. ASA 21/3853/2016. Accessed April 29, 2025: <https://www.amnesty.org/en/documents/asa21/3853/2016/en/>
- An-Na'im, Abdullahi A. 1990. *Toward an Islamic reformation: civil liberties, human rights, and international law*. Syracuse, NY: Syracuse University Press.
- Auda, Jasser. 2008. *Maqasid Al-Shariah as philosophy of Islamic law: a systems approach*. Herndon, VA: International Institute of Islamic Thought.
- Baxi, Pratiksha. 2010. «Justice is a secret: compromise in rape trials.» *Contributions to Indian Sociology* 44: 207–33.
- Bell, Daniel A. 2006. *Beyond liberal democracy: political thinking for an East Asian context*. Princeton, NJ: Princeton University Press.
- Bentwich, Norman. 1948. «The legal system of Palestine under the Mandate.» *Middle East Journal* 2: 33–46.
- Berger, Maurits, and Nadia Sonneveld. 2010. «Sharia and national law in Egypt.» In *Sharia incorporated: a comparative overview of the legal systems of twelve Muslim countries in past and present*, edited by Jan Michiel Otto, 51–88. Leiden: Leiden University Press.
- Bombay High Court (Nagpur Bench) 2010. *State of Maharashtra v. Gopal Sakru Binjewar and Others*. Criminal Appeal Nos. 577–578 of 2009.
- Bowen, John R. 2007. *Why the French don't like headscarves: Islam, the state, and public space*. Princeton, NJ: Princeton University Press.
- Bowling, Ben, and Coretta Phillips. 2007. «Disproportionate and discriminatory: reviewing the evidence on police stop and search.» *The Modern Law Review* 70: 936–61.
- Cairo Misdemeanor Court. 2020. *Judgment on domestic violence case*. Cairo, Egypt.
- Chan, Janet B.L. 1997. *Changing police culture: Policing in a multicultural society*. Cambridge: Cambridge University Press.
- Chirayath, Leila, Caroline Sage, and Michael Woolcock. 2005. *Customary law and policy reform: Engaging with the plurality of justice systems*. Washington, DC: World Bank.
- Claassens, Aninka, and Sizani Ngubane. 2008. «Women, land and power: The impact of the communal land rights act.» In *Land, Power & Custom*, edited by Aninka Claassens and Ben Cousins, 154–83. Cape Town: UCT Press.
- Commins, David D. 2015. *Islam in Saudi Arabia*. London: I.B. Tauris.
- Constitutional Court of South Africa. 2004. *Bhe and Others v. Magistrate, Khayelitsha and Others*. ZACC 17; 2005 (1) SA 580 (CC).
- Cook, Michael. 2000. *Commanding right and forbidding wrong in Islamic thought*. New York: Cambridge University Press.
- Davis, Donald R., Jr. 2010. *The spirit of Hindu law*. Cambridge: Cambridge University Press.

- Donnelly, Jack. 2013. *Universal human rights in theory and practice*. 3rd ed. Ithaca, NY: Cornell University Press.
- Dumont, Louis. 1980. *Homo Hierarchicus: the caste system and its implications*. Chicago: University of Chicago Press.
- Elias, Taslim O. 1956. *The nature of African customary law*. Manchester: Manchester University Press.
- Englund, Harri. 2006. *Prisoners of freedom: human rights and the African poor*. Berkeley: University of California Press.
- Factor, Roni, and Yoav Mehozay. 2023. «Deeply embedded core normative values and their relationship with perceptions of legitimacy.» *Policing: A Journal of Policy and Practice* 17.
- Fayez, Said. 2025. «Converts to Christianity in Egypt: Crises without end.» *Coptic Solidarity*, October 9. Accessed October 21, 2025: <https://www.copticsolidarity.org/2025/10/09/converts-to-christianity-in-egypt-crises-without-end/>.
- Fikentscher, Wolfgang. 1991. «Review of harmony ideology.» *The American Journal of Comparative Law* 39: 454–58.
- Finnis, John. 1980. *Natural law and natural rights*. Oxford: Clarendon Press.
- Furr, Ann, and Muwafaq Al-Serhan. 2008. «Tribal customary law in Jordan.» *South Carolina Journal of International Law and Business* 4: 17–34.
- Galanter, Marc. 1981. «Justice in many rooms: Courts, private ordering, and indigenous law.» *The Journal of Legal Pluralism and Unofficial Law* 13: 1–47.
- Government of Japan. 2016. «Sharing the community-based police model.» *JapanGov*, Spring. Accessed April 27, 2025: https://www.japan.go.jp/tomodachi/2016/spring2016/sharing_police_model.html.
- Griffiths, John. 1986. «What is legal pluralism?» *The Journal of Legal Pluralism and Unofficial Law* 18: 1–55.
- Hallaq, Wael B. 2004. *The origins and evolution of Islamic law*. Cambridge: Cambridge University Press.
- Hoque, Muhammad R., and Muhammad M. Zarif. 2020. «Traditional Shalish system for rural dispute resolution in Bangladesh.» *IIUC Studies* 16: 35–56.
- Human Rights Watch. 1999. *Broken people: caste violence against India's 'untouchables'*. New York: Human Rights Watch.
- Human Rights Watch. 2012. *'I had to run away': The imprisonment of women and girls for 'moral crimes' in Afghanistan*. New York: Human Rights Watch.
- India. 1989. *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*. Act No. 33 of 1989.
- International Christian Concern. 2025. «Christian convert charged with terrorism in Egypt.» *International Christian Concern*, July 30. Accessed September 3, 2025: <https://persecution.org/2025/07/30/christian-convert-charged-with-terrorism-in-egypt/>.
- Islamic Republic of Afghanistan. 2009. *Shiite Personal Status Law*. Kabul: Government of Afghanistan.
- Jauregui, Beatrice. 2016. *Provisional authority: police, order, and security in India*. Chicago: University of Chicago Press.

- Johnstone, Naomi. 2015. *Tribal dispute resolution and women's access to justice in Jordan*. Amman: WANA Institute.
- Kaime, Thoko. 2004. «Review of customary aw in South Africa, by T.W. Bennett.» *Journal of African Law* 48: 271–273.
- Kamali, Mohammad H. 2008. *Shari'ah Law: an introduction*. Oxford: Oneworld Publications.
- Kane, Pandurang V. 1930. *History of Dharmashāstra*. Vol. 1. Pune: Bhandarkar Oriental Research Institute.
- Kant, Immanuel. 2012. *Groundwork of the metaphysics of morals*. 2nd ed. Cambridge: Cambridge University Press.
- Kaste, Martin. 2018. «For local cops in Germany, no talk of 'Sanctuary cities'.» *NPR*, July 30, 2018.
- Klein, George C. 2024. «Real policing: an exploration in police legitimacy.» *Journal of Police and Criminal Psychology* 39: 390–401.
- Konoorayar, Vishnu. 2014. *Old wine in new bottle: Access to justice in India and effectiveness of Gram Nyayalayas*. January 15. Accessed April 27, 2025: <https://ssrn.com/abstract=2534901>
- Locke, John. 1988. «Two treatises of government». In *Cambridge texts in the History of Political Thought*, edited by Peter Laslett. Cambridge: Cambridge University Press.
- Lubin, Timothy. 2007. «Punishment and expiation: overlapping domains in Brahmanical law.» *Indologica Taurinensia* 33: 93–122.
- McConkie, Daniel S., Jr. 2024. «Promoting and reforming Kenya's customary justice systems in criminal cases.» *Emory International Law Review* 38: 343–388.
- Mendelsohn, Oliver, and Marika Vicziany. 1998. *The untouchables: subordination, poverty and the State in modern India*. Cambridge: Cambridge University Press.
- Merry, Sally E. 1988. «Legal pluralism.» *Law & Society Review* 22: 869–896.
- Mokgoro, Yvonne. 1998. «Ubuntu and the law in South Africa.» *Buffalo Human Rights Law Review* 4: 1–6.
- Morning Star News. 2025. «Two Christians in Egypt released after three years in jail.» February 4. Accessed April 27, 2025: <https://morningstarnews.org/2025/02/two-christians-in-egypt-released-after-three-years-in-jail/>.
- Mutua, Makau W. 2001. «Savages, victims, and saviors: The metaphor of human rights.» *Harvard International Law Journal* 42: 201–245.
- Nwauche, Enyinna S. 2010. «The Constitutional challenge of the integration and interaction of customary and received English Common Law in Nigeria and Ghana.» *Tulane European and Civil Law Forum* 25: 37–63.
- Oomen, Barbara. 2005. *Chiefs in South Africa: Law, power & culture in the post-Apartheid Era*. New York: Palgrave Macmillan.
- Panning, Hunter A. 2024. «Ubuntu: Uniting hearts and transforming public safety for a better tomorrow.» *Police* 1, June 16. Accessed April 27, 2025: <https://www.police1.com/community-policing/ubuntu-uniting-hearts-and-transforming-public-safety-for-a-better-tomorrow>.

- Parekh, Bhikhu. 2001. «Rethinking multiculturalism: cultural diversity and political theory.» *Ethnicities* 1: 109–115.
- People's Action Party. 2019. «Efforts to protect and defend Singapore's social cohesion.» *PAP News*, April 11.
- Phillips, Naomi. 2017. «Challenges to police reform in post-apartheid South Africa.» *On Politics* 11(1): 53–68.
- Pkalya, Ruto, Mohamud Adan, and Isabella Masinde. 2004. *Indigenous democracy*. Nairobi: ITDG–Eastern Africa.
- Ramose, Mogobe B. 1999. *African philosophy through Ubuntu*. Harare: Mond Books.
- Rani, Bittoo. 2014. «Sharia Courts as informal justice institution in India.» *International Journal of Humanities, Social Sciences and Education* 1: 129–139.
- Republic of Indonesia. 2006. *Law No. 11 of 2006 on the Governing of Aceh*. Jakarta: Government of Indonesia.
- Rousseau, Jean-Jacques. 1968. *The social contract*. London: Penguin Classics.
- Sharma, Arvind. 2000. *Classical Hindu thought*. Oxford: Oxford University Press.
- Shan, Wei. 2014. «China's initiatives in 'social management'.» In *Governing Society in Contemporary China*, edited by Lijun Yang and Wei Shan, 123–140. Singapore: World Scientific Publishing.
- Shell-Duncan, Bettina, Zhuzhi Moore, and Carolyne Njue. 2017. *The medicalization of female genital mutilation/cutting: What do the data reveal?* New York: Population Council.
- Sidahmed, Abdel S. 2011. «Review of Islam and the secular state.» *Windsor Yearbook of Access to Justice* 29: Article 3.
- Skolnick, Jerome H. 1993. «Justice without trial.» In *Police innovation and control of the police*, edited by L. Green, D. Weisburd, and C. Uchida, 13–31. New York: Springer.
- Supreme Court of India. 1993. *State of Karnataka v. Appa Balu Ingale*. AIR 1993 SC 1126.
- Supreme Court of India. 2018. *Subhash Kashinath Mahajan v. State of Maharashtra*. AIR 2018 SC 1498.
- Tamanaha, Brian Z. 2011. «The rule of law and legal pluralism in development.» *Hague Journal on the Rule of Law* 3: 1–17.
- Teltumbde, Anand. 2010. *The persistence of caste: The Khairlanji murders and India's hidden apartheid*. London: Zed Books.
- Tu, Weiming. 1993. «Confucianism.» In *Our religions*, edited by Arvind Sharma, 141–227. San Francisco: Harper San Francisco.
- Tutu, Desmond M. 1999. *No future without forgiveness*. New York: Doubleday.
- Tyler, Tom R. 2003. «Procedural justice, legitimacy, and the effective rule of law.» *Crime and Justice* 30: 283–357.
- United Nations General Assembly. 1948. *Universal Declaration of Human Rights*. Paris: United Nations.

- Van der Veer, Peter. 2004. «The production of Hindu-Muslim violence in contemporary India.» *Contemporary Sociology* 33: 483–484.
- Walker, Samuel. 2014. *The new world of police accountability*. 2nd ed. Thousand Oaks, CA: SAGE Publications.
- Wilson, Richard A. 2001. *The politics of truth and reconciliation in South Africa*. Cambridge: Cambridge University Press.
- Wortley, Scot, and Akwasi Owusu-Bempah. 2011. «The usual suspects: Police stop and search practices in Canada.» *Policing and Society* 21: 395–407.

The ethics of enforcement: human rights-based policing in duty-oriented societies

La ética de la aplicación de la ley: la vigilancia policial basada en los derechos humanos en sociedades orientadas al deber

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Abstract: This article examines the tension between rights-based policing and duty-based morality. Liberal democracies, concerned for individual autonomy, procedural safeguards, and encroachment by the state, continue to create tensions with morality rooted in relational duty and collective ethics. In particular, non-Western societies often conceptualize justice in terms of social harmony and duty, representing justice shaped by a cultural context. Through

multidisciplinary theory and comparative cases, this article shows how the imposition of rights-based frameworks results in cultural resistance. The paper discusses informal justice systems. Therefore, on the one hand, it explores the promise and peril of hybrid justice models. Accordingly, on the other hand, it proposes a more sophisticated or nuanced conceptualization that respects cultural contexts, without undermining the universality of core human rights protections.

Keywords: Human rights universalism, rights-based policing, duty-based ethics, legal pluralism, cultural relativism.

Resumen: Este artículo examina la tensión entre la vigilancia policial basada en los derechos y la moral basada en el deber. Las democracias liberales, preocupadas por la autonomía individual, las garantías procesales y la injerencia estatal, siguen generando tensiones con la moral arraigada en el deber relacional y la ética colectiva. En particular, las sociedades no occidentales suelen conceptualizar la justicia en términos de armonía social y deber, representando una justicia moldeada por un contexto cultural. Mediante teoría multidisciplinaria y estudios de caso comparativos, este artículo muestra cómo la imposición de marcos basados en los derechos genera resistencia cultural. El trabajo analiza los sistemas de justicia informal. Por lo tanto, por un lado, explora las ventajas y los riesgos de los modelos de justicia híbridos. En consecuencia, por otro lado, propone una conceptualización más sofisticada y matizada que respeta los contextos culturales sin menoscabar la universalidad de la protección de los derechos humanos.

Palabras clave: Universalismo de derechos humanos, modelo policial basado en derechos, ética basada en el deber, pluralismo jurídico, relativismo cultural.

1. Background

Policing models based on human rights-based framework have increasingly emphasized values such as transparency, accountability, and the safeguarding of the rights of the individual. These models spring from international human rights law, and the theory of liberal democracy, and prevail with an approach to law enforcement that takes individual rights, equality, and the prevention of state abuses into consideration. However, this model of rights-based policing presumes that communities share a moral understanding of something like individualism, which fails to establish a common moral ground in distinctly morally plural societies.

In many societies the existing moral structure prioritizes duties over rights, particularly those shaped by collectivist traditions, religious law, or customary norms. In these communities, the interest does not tend to lie in what is owed to an individual by the state or society but rather what is owed to others, elders, God or religious authorities, or community, or merely one's family. For instance, Confucian, Islamic, Hindu, and many African communitarian worldviews emphasize obedience, social harmony, and moral conduct based on one's social role rather than the assertion of personal entitlements (An-Na'im 1990; Tu 1993).

This difference between liberal rights discourse and duty-based moral systems highlights a broader philosophical tension that animates global discussions of justice and legitimacy in relation to the proper order of social relations. It raises even more serious questions about the legitimacy of reform motivated externally, and under what conditions policing can remain culturally embedded and normatively defensible. It is important to note at the outset, however, that rights-based and duty-based frameworks should not be understood as hermetically sealed, mutually exclusive systems. Rather, they represent identifiable tendencies along a normative continuum upon which different societies are differently positioned, and along which the same society may move over time (Donnelly 2013). Customary duty-oriented societies, for instance, often retain significant space for obligations owed by the community to the individual, even where individual rights claims are not formally articulated, whereas certain religiously grounded duty-based systems may be considerably more demanding of individual obligation without a corresponding architecture of individual entitlement (An-Na'im 1990).

2. Problem statement

This paradox between universal rights and local duties exists at the heart of this paper. Can rights-based policing be meaningfully implemented in societies where moral legitimacy comes from fulfilling relational obligations rather than asserting individual rights? What happens when policing reforms are inspired by international norms are introduced in settings where moral legitimacy is measured not by legal equality, but by fulfilling one's duty towards others?

The imposition of rights-based models in culturally diverse societies often produces resistance, not merely due to institutional constraints, but because of fundamental moral misalignments. This resistance is commonly interpreted as legal imperialism, undermining the legitimacy of reform efforts and alienating communities from the very institutions meant to protect them. It must equally be acknowledged, however, that resistance to rights-based frameworks does not always arise from sincere moral difference alone. At times, such resistance is driven by the deliberate interests of those who benefit from the existing distribution of power, such as elders, patriarchal authorities, or political elites for whom the language of cultural preservation functions as a shield against accountability (Donnelly 2013; Mutua 2001). A complete analysis of the legitimacy of policing reform must therefore distinguish between resistance rooted in genuine normative pluralism and resistance rooted in the protection of privilege.

3. Objective

This article explores the underlying ethical and moral foundations of rights and duties, and how those moral systems shape both theoretical and operational models of policing. It examines case studies from across the world in which cultural resistance to international human rights principles has manifested. It also assesses informal justice mechanisms like jirgas, panchayats, and customary courts that continue to function with significant social legitimacy, even when their practices contradict international human rights standards (Baxi 2010).

The objective is not to advocate for the supremacy of either rights or duties, but to critically examine the conditions under which policing reforms can be both culturally legitimate and normatively sound. It pursues to identify reform strategies that attempt to balance universal

human rights principles with culturally rooted moral systems, without compromising either.

4. Literature review

This literature review explores the very foundations that shape policing models across culturally diverse societies. It combines classical philosophical traditions with legal codifications, and recent empirical research to illuminate the tension between rights-based and duty-based approaches to justice. It is organized thematically to reflect the interdisciplinary nature of the research and to establish a theoretical foundation for analyzing the legitimacy of policing across moral traditions.

4.1. *The liberal conception of rights: individualism and autonomy*

a) ORIGINS IN ENLIGHTENMENT RATIONALISM

The ongoing idea of individual rights first emerged in the Enlightenment period. It was when philosophers such as John Locke, Jean-Jacques Rousseau, and Immanuel Kant articulated the idea of a society that is founded on the fundamental human dignity and liberty. Among them, Locke proclaimed that people by birth possess 'natural rights' to life, liberty, and property, all of which governments must uphold (Locke 1988). Rousseau put forth his idea of social contract, where individuals consent to be governed but in exchange for protection of these rights (Rousseau 1968). Kant refined the topic of rights, but he viewed the rights of individuals through the lens of rational autonomy and moral obligation. He argued that people should always be held in respect for who they are and, therefore, should never be used for the purposes of someone else (Kant 2012). Which, of course, relates directly to the concept of rights in modern understanding. This individual-focused position is fundamental to the current political and legal doctrines that eventually formed the basis of constitutionalism, liberal democracy, and the responsibility of the modern state's obligation to protect individual liberties. It is important to note, however, that the concept of human dignity, which is often treated as a distinctively enlightenment inheritance, predates these thinkers considerably. Christian natural law theorists such as Thomas Aquinas grounded human dignity the image of God present in every

human being, from which flowed obligations of justice that both rulers and subjects were bound to observe (Finnis 1980). Similarly, Islamic jurisprudence had long recognized the concept of human dignity and the protection of individual life, intellect, lineage, religion, and property under sharia law (Auda 2008). This broader genealogy of right-adjacent thinking cautions against any reading of IHRL as exclusively a Western or Enlightenment invention.

b) LEGAL CODIFICATIONS OF RIGHTS

The Universal Declaration of Human Rights, which was codified in the aftermath of World War II, was a direct product of similar enlightenment thinking. For instance, it declares that “all human beings are born free and equal in dignity and rights” (United Nations General Assembly 1948, art. 1) and that “everyone has the right to life, liberty and security of person” (United Nations General Assembly 1948, art. 3), which carries the same ideology. Even the International Covenant on Civil and Political Rights and the European Convention on Human Rights built on the same liberal premise that any mode of justice must also be organized around preventing the state from abusing individual rights.

In recent times, scholars have widened this debate by examining how legitimacy is constructed in practice. For instance, George Klein’s ethnographical study demonstrates that police legitimacy is not simply a function of legal authority, but rather it is negotiated through procedural justice and community engagement. Officers time and again act as “street-level bureaucrats,” administering moral duty rather than enforcing abstract rights (Klein 2024). Which suggests that even within liberal framework, legitimacy is dependent on the relational dynamics and perceived fairness, not exclusively on codified rights.

4.2. *Duty-based ethics: an overview of non-Western moral systems*

a) CONFUCIANISM: HIERARCHY, HARMONY, AND RITUAL OBLIGATION

The Confucian moral tradition, which is heavily influential across East Asia, grounds justice not in rights but in the fulfillment of social roles and obligations. Central to Confucianism is the concept of *li* (ritual) and *ren* (humaneness), both of which determine behavior through a comprehensive and interconnected framework of family and social moral

obligations. Confucius teaches that the individual exists within a network of relationships, such as parent-child, ruler-subject, elder-younger and that morality ultimately lies in behaving appropriately within each relationship (Tu 1993). As Daniel Bell (2006) argues Confucian societies often see the family and community, not the individual person, as the basic moral unit. Rights, if they even exist in this ideology, are subordinate to the effective harmonious functioning of society. Social harmony is given priority over adversarial justice. In this context, policing functions as a mechanism for preserving social order and reinforcing moral conduct rather than protecting individual rights.

b) *Islamic thought: divine duties and collective morality*

In Islamic legal traditions, justice is derived from God, and individuals have obligations or duties to God and the community. *Sharia* emphasizes obligations, but it does not emphasize rights in the way liberalism emphasizes rights. The basis of *sharia* law is as simple as obligations to pray, give charity (*zakat*), and uphold social justice (*adl*). While Islam does recognize certain rights like *haqq al-nafs* (the right of self), they are found within the framework of duties to God and the community (An-Na'im 1990). Furthermore, under *maqasid al-sharia* (the intents and purposes of Islamic law), justice is understood through preserving religion, life, intellect, lineage, and property, and each with corresponding duties for the individual and society (Auda 2008). The term right is not autonomous; rights are derived from God and explained through the Quran and Hadith (Kamali 2008, 89–92). In practice, this ultimately manifests itself as policing for moral behavior, as described in the case of religious police patrolling society in Saudi Arabia (Cook 2000, 412–415), or community devoted to policing through religious mediation as seen in parts of Indonesia and Nigeria. Justice, in this sense, is achieved by fulfilling or performing the roles that God requires of individuals, and not by demanding personal rights (Abou El Fadl 2001, 72–75; Hallaq 2004, 156–160).

c) HINDU DHARMA: SOCIAL ROLE AND COSMIC RESPONSIBILITY

Hindu philosophy on another hand presents the concept of *dharma* that is both about obligations owed to others, and the notion of cosmic order (Kane 1930, 1–5). In this philosophy each person is born into a social group (*varna*) and life stage (*ashrama*) and is morally

obligated to fulfill the duties appropriate to that status (Dumont 1980, 66–71; Sharma 2000). Rights are not rejected, but they are deeply rooted in the hierarchical obligations (Davis 2010, 89–93). Justice in this expression is a matter of balance and karma, rather than legal equality. Law (*dharmashāstra*) has codified obligations rather than an individual's claims on another individual, thereby affirming caste distinctions and roles related to gender (Lubin 2007, 93–122). Even though India's Constitution has liberal rights preserved into it, customary practices rooted in dharma continue to construct policing norms, especially in rural and caste-bound environments (Jauregui 2016, 78–82).

d) AFRICAN COMMUNITARIAN ETHNICS: UBUNTU AND RELATIONAL PERSONHOOD

African communitarian traditions, specifically the concept of *Ubuntu*, which means “I am because we are”, present justice as collective (Ramose 1999, 49–52). Under which personhood is not something inherent to humans but is something achieved through harmonious association with others and moral responsibility (Mokgoro 1998). Wrongdoing is not limited to the breaking of a law but rather the breaking of relationship, and requires reparation through reconciliation, not through punishment (Tutu 1999, 34–38). *Ubuntu* rooted in restorative justice models have been incorporated to address wrongdoing in the post-apartheid South Africa's Truth and Reconciliation Commission (Wilson 2001, 9–12), as well as village courts in Malawi and tribal systems in Botswana (Englund 2006). This principle also touches on policing models focused on relationships, communal healing, and relational accountability, more than adversarial legalism.

Roni Factor and Yoav Mehozay's recent work propagated the typology of four normative value systems: religious–traditional, liberal, republican–communitarian, and ethno-national systems to explain how cultural orientations influence the construction of police legitimacy (Factor and Mehozay 2023). Their research also highlights the necessity of culturally responsive policing models.

4.3. *The Universalism dilemma: when rights meet roots*

Even if human rights law is aimed to reflect a cultural neutrality across the world, the philosophical center of human rights is deeply rooted in Euro-American liberalism. Human rights have faced this

criticism several times over the course of time, with scholars like Makau Mutua depicting human rights as a “civilizing mission” that creates a binary triad of the “savage” non-western actors, the “victim,” and the “savior” i.e. western actors (Mutua 2001). It’s failure to account for different social contexts has led to cultural resistance and accusations of legal imperialism, particularly in the areas where traditional duties govern family law, gender relations, and community conduct. Scholars such as Abdullahi An-Na’im have argued persuasively, however, that the proper response to this critique is not to abandon rights but to re-root them in the moral vocabularies of different traditions, demonstrating that analogues of dignity, fairness, and protection from abuse are present across cultures even where they are not framed in the language of individual entitlement (An-Na’im 1990). This approach of internal cultural legitimation, rather than external imposition, offers a more sustainable foundation for rights-based reform than either a universalism that ignores context or a relativism that capitulates local power.

5. Methodology

5.1. *Research design*

This study uses a qualitative and literature-based research design. The aim of this design is to explore the tension that exists between rights-based and duty-based policing models across societies which are culturally diverse in nature. The research implements a multidisciplinary framework that integrates legal theory with moral philosophy and comparative policing studies to examine how different moral systems help in shaping the legitimacy and functionality of law enforcement institutions.

Rather than using an empirical fieldwork methodology, this study uses theoretical analysis and comparative case inquiry. The reason why this approach is used, is to examine the philosophical basis and implications of policing reforms. Because this study is highly interpretive in nature, it allows for essential engagement with different doctrinal texts, cultural traditions, and international legal instruments. This approach further enables the identification of underlying faults and the conditions under which reform strategies may succeed or fail. The analysis proceeds on the understanding that rights-based and duty-based moral frameworks are best treated as poles on a normative continuum rather than as binary opposites, even as the paper identifies and analyses tendencies that cluster around those poles for analytical clarity.

5.2. *Literature review process*

The literature review underwent a systematic yet iterative process that aimed to identify, evaluate, and synthesize important sources across fields. The literature review consisted of the search of targeted key terms based on various databases including JSTOR, HeinOnline, SSRN, and Google Scholar. The search terms included combinations of the following terms, "rights-based policing," "duty-based ethics", "legal pluralism," "human rights universalism," "form of justice," and "cultural legitimization."

Selected sources were determined based upon standards of scholarly rigor, relevance to the research questions, and further theoretical or practical debates within the literature. Notably, the review prioritized high impact law journals, interdisciplinary journals, and texts that assessed the universalism-relativism debate related to theoretical human rights discussion.

The review incorporated both foundational texts and recent developments, to ensure that both historical depth and contemporary relevance has been maintained. Finally, to ensure pluralistic representation the literature review emphasized sourcing literature from the Global South, and alternative worldviews in opposition of Eurocentric legal paradigms.

5.3. *Limitation of methodology*

Because this is strictly desk-based research, it is restricted by its reliance on secondary sources only. Since there is an absence of primary data, such as interviews with stakeholders, surveys, or observation of the work in the field, it limits the ability of this research to assess real-time community responses or institutional dynamics.

There are also constraints associated with the study's scope as it is limited by the availability and accessibility of documented practices of informal justice systems. Interpretations of non-Western moral systems are facilitated heavily through academic literature, which may introduce framing biases.

Despite these limitations, the methodology adopted for this research is appropriate for the study's conceptual and normative focus. Future research should build on this foundation through empirical fieldwork, stakeholder engagement, and participatory observation to capture lived experiences and institutional nuances.

6. Moral frameworks and policing models

6.1. *The role of policing in traditional societies*

a) THE DUTY-CENTERED POLICE MODEL

In many cultural settings where social obligation is prioritized over individual rights. In those settings, policing is more frequently seen as an extension of social duty (Government of Japan 2016; People's Action Party 2019) rather than an instrument to enforce individual rights. Law enforcement there is usually framed as a social responsibility, with a fundamental emphasis on maintaining public harmony, fulfilling moral obligations, and reinforcing collective norms (Shan 2014, 123–140). This policing model conveys the idea that preserving collective welfare is the primary concern and that individual welfare is expected to, at times, yield to collective needs of the society. Accordingly, police are often seen not as the guardians of individual rights, but as moral agents tasked with upholding culturally sanctioned duties of society as a whole.

b) THE FAMILY AS THE FIRST LINE OF DEFENSE

In certain traditional societies, particularly those that follow a patriarchal culture, the family head serves the role of the primary institution for policing and social control. The role of police as an institution is secondary to familial oversight, with elders or heads of families are expected to enforce order within their home (Pkalya et al. 2004, 89–95). The argument made is based on the belief that individual rights are best protected through interpersonal relationships and obligations to one's kin and elders. A concept that can be used to clarify this example would be how the concept of *Ubuntu* influences family and community-based policing in African communities (Panning 2024). In an *Ubuntu* type of paradigm, surrogates or elders may work as mediators to address any disputes within the community while ensuring that the conduct of individuals aligns with social expectations (Panning 2024). This model reflects an interpersonal conception of justice, where social unity is maintained through interpersonal accountability rather than any formal legal interference.

c) RELIGIOUS POLICING AND MORAL ORDER

In any society where religion is a prominent source of moral and legal norms, police forces may eventually act as an extension of divine

law that is derived from religious texts. In this context, policing is not simply a legal function, rather it becomes a sacred duty to enforce divine law and protect religious belief. Examples include the role of religious police in Saudi Arabia, whose primary duty is to enforce the observance of Islamic law (Commins 2015, 66), or the religious courts that function in some parts of Israel (Bentwich 1948, 33–46) and India (Rani 2014, 129–139), which address matters of family law and personal conduct according to religious principles. In such societies, the police's authority is primarily linked to their duty of protecting the moral purity of society. This unusual blend of legal and theological authority complicates the application of secular human rights norms, particularly in areas of gender, sexuality, and personal status law.

6.2. *Rights-based policing: the Liberal model*

a) THE LIBERAL STATE AND POLICE AS PROTECTORS OF RIGHTS

Rights-based policing represents a shift in the ideology of policing from duty-based models. This approach originates from liberal political theory that views civil liberties and personal freedom as the foundation of justice. In a liberal democratic setting, the role of the police is primarily to protect the citizens' rights to life, liberty and property¹. The model assumes that the primary role of the police is to intervene in order to resolve conflicts that involve an individual's rights², and limiting their role only to safeguarding individual freedoms, rather than enforcing moral duties of the society³. Police are to act as neutral agents of law enforcement with the obligation to act impartially to prevent individuals from experiencing harm, and an obligation to ensure citizens can exercise their rights without concerns of interference (Skolnick 1993).

b) POLICE ACCOUNTABILITY AND THE RULE OF LAW

A rights-based approach to policing model is inherently linked to the principles of accountability and transparency (Walker 2014, 45–67). In Modern democratic systems mechanisms are in place with the purpose

¹ *Warren v. District of Columbia*. 1981. 444 A.2d 1 (D.C. Ct. App.). *DeShaney v. Winnebago County Department of Social Services*. 1989. 489 U.S. 189.

² *Town of Castle Rock v. Gonzales*. 2005. 545 U.S. 748.

³ *Lawrence v. Texas*. 2003. 539 U.S. 558.

of holding police forces accountable to the law. Some of these mechanisms do include independent oversight bodies, judicial review, and public accountability through elected officials⁴. In a liberal society, police actions are dictated by strict protocols that are in place designed to uphold due process and proportionality. It ensures that interventions when made are lawful and justified in nature. Police must function within legal norms that protect individuals' rights, particularly vulnerable and marginalized people (Bowling and Phillips 2007, 936–961). From a legal point of view, this approach prioritizes procedural fairness. It further ensures that police powers are exercised only when it is necessary and is being done with minimal interference with individual rights (Tyler 2003, 29–53). The legitimacy of policing, in this model, comes from legal rationality and social accountability rather than moral conformity.

6.3. *Police in value-diverse societies*

a) MULTICULTURALISM AND THE CHALLENGE OF POLICING

In multicultural societies, police must create an equilibrium between enforcing the law in an evenhanded manner and taking into account the differences in moral codes and/or laws⁵. Police agencies are required to implement a community partnership model, which includes engaging in cultural competency training and collaborating with individuals in the community in order to build legitimacy with the members of the community (Chan 1997). For instance, in Canada, community liaison officers work with Indigenous, Muslim, and immigrant communities to create culturally responsive forms of policing and to address mistrustful relationships formed due to the oppressive and violent past (Wortley and Owusu-Bempah 2011, 395–407). This model of engagement from police reflects a shift from enforcement, where legitimacy has to be earned through dialogue, representation, and procedural fairness.

b) THE ROLE OF POLICE IN SOCIAL INTEGRATION

In societies that frequently receive migrants or are in post-conflict situations, police are often seen as integration agents providing

⁴ *R (on the application of Commissioner of Police of the Metropolis) v. Police Misconduct Tribunal*. 2021. EWCA Civ 82.

⁵ *R. v. Williams*. 1998. 1 S.C.R. 1128 (Supreme Court of Canada).

information about civil rights and the rule of law to newcomers. In Germany, for instance, there are specialized police-based outreach units whose purpose is to help support the refugee communities, with a particular focus on prevention of marginalization and dissemination of rights and obligations (Kaste 2018). In post-apartheid South Africa, it was seen that police reforms were made aimed at transforming the South African Police Service (SAPS) from a coercive and authoritarian tool to a community-oriented police service supporting democratic values (Phillips 2017). These examples rightfully highlight the potential for reimagining the role of a police institution to act as promoters of inclusion and civic integration, especially in value diverse contexts.

c) POLICING MINORITY RIGHTS AND DUTIES

Conflicts frequently occur when state-enforced human rights clashes with the opposing cultural or religious obligations (Parekh 2001, 109–115). For example, liberal protections for sexual and gender freedoms may conflict with customary practices for family honor, religious modesty, or communal discipline to create social order. When these conflicts arise, police are caught between enforcing universally adopted legal standards of justice and weighing them against community-based moral expectations. For example, in France, laws prohibiting religious symbols in schools are seen by many in the Muslim community to be targeting Islamic identity and violating religious duty (Bowen 2007). In India, personal laws, contingent on religious affiliation, further complicate policing practices, especially in family law regarding marriage, custody, or inheritance (Agnes 2011, 45–78). Police are routinely criticized for being either too lenient or overzealous depending on the political moment and the majority group's religious dynamics (van der Veer 2004).

7. Normative conflicts in policing reform

Bringing rights-centered policing to communities operating with duty-centered moral systems raises difficult normative challenges. When the laws of international human rights enter communities in which there are entrenched moral systems typically focused on the collective good or collective duty, there is likely to be a clash. In these situations, local authorities and police forces will be caught between two competing moral frameworks. This section uses comparative case

studies from Nigeria, Egypt, and India to explore these tensions and demonstrates the operational and moral dilemmas police forces experience in the face of competing conceptions of justice.

7.1. *Nigeria: customary law vs. human rights enforcement*

In Nigeria, there has been records of considerable conflict between customary law and international human rights laws, creating challenges for police officers responsible for policing human rights there⁶. Customary laws in several Nigerian communities focuses much on communal harmony, the authority of ancestors, and fulfilling social duties (Elias 1956). In contrast, international human rights law has always emphasized individual rights.

For example, trying to address female genital mutilation, a widespread practice in some communities in Nigeria, faced significant backlash (Shell-Duncan et al. 2017). Local authorities associate female genital mutilation with their cultural heritage, viewed police investigations and interventions as implementing foreign identities and values. The Nigerian national police faced challenges trying to enforce national law from the human rights perspective in these communities and build positive relationships with them (Alemika 1999). Unfortunately, interventions did not succeed in changing cultural norms, while further instilling a divide between communities and law enforcement.

In these contexts, local populations often view the enforcement of human rights as an infringement on cultural identity (Nwauche 2010, 37–63). Police forces in these situations were seen as external actors. This undermined their legitimacy and ability to effectively enforce the law. Their inability to partner with local leaders made matters even worse, contributing to a heightened resistance against policing strategies. This case demonstrates the necessity for reform strategies to be culturally embedded and that engage local moral authorities while also respecting fundamental human rights. Crucially, however, the failure of top-down enforcement in Nigeria should not be read as a vindication of female genital mutilation or other practices that inflict direct bodily harm on individuals, particularly children and women. It is instead a failure of strategy, not a failure of the underlying rights norms.

⁶ *Mojekwu v. Mojekwu*. 1997. 7 NWLR (Pt 512) 283 (Nigerian Court of Appeal).

7.2. Egypt: gender justice and Sharia-based policing

In Egypt, the role of *Sharia* law in shaping the legal and social context is profound. Rights-based policing there focused on supporting women's rights often comes into conflict with cultural perspectives that uphold traditional interpretations of Islamic law (Berger and Sonneveld 2010, 51–88). The rights of women to bodily autonomy, protection from domestic violence, and equality before the law, are often in conflict with dominant masculinities that view a woman's value primarily within the family structure (Al-Sharmani 2013). While international human rights frameworks support women's rights and gender-based violence, local religious leaders and communities often view these efforts as an infringement on their religious beliefs. When police respond to situations of domestic violence or attempt to protect women from early marriage, the police are often accused of undermining the religious framework.

In certain examples, police officers in Egypt entered the cultural conflict, attempting to juggle human rights with the philosophy of the communities (Cairo Misdemeanor Court 2020). Conservative elements in society may assert that outside interventions advocating on behalf of women's rights represent western impositions of Islamic values, and thus, police agencies are stuck between a rock and a hard place. The idea of imposed norms generates opposition, especially in communities with heavily entwined religious identities and moral authority. The Egyptian example helps illustrate that gender justice initiatives must navigate theological legitimacy and cultural appropriateness as to not be dismissed as legal imperialism.

7.3. India: caste, custom, and rights-based policing

Policing in the cases concerning caste-based discrimination in India offers a unique challenge to those who advocate for rights-based policing. The Indian Penal Code, alongside specific acts pertaining to the protection of civil rights, criminalizes discrimination on the basis of caste⁷. However, traditional caste-based customs continue to exist in rural communities. Practices, such as untouchability and hierarchical

⁷ India. 1860. *Indian Penal Code*. Act No. 45 of 1860. s. 153A.

India. 1955. *Protection of Civil Rights Act*. Act No. 22 of 1955. s. 3. India. 1989. *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*. Act No. 33 of 1989, ss. 3(1)(x), 3(1)(xi)

discrimination, remain well-established in those communities (Mendelsohn and Vicziary 1998). The national laws and policing efforts aimed at enforcing the rights of marginalized groups often meet heavy resistance from local communities, who consider this caste system as an integral part of their social fabric (Human Rights Watch 1999).

For example, when police forces respond to incidents of caste-based discrimination or violence, they face hostility from local, upper-caste communities who are concerned that such policing intervention is a challenge to the existing social order (Supreme Court of India 1993; Bombay High Court 2010; Teltumbde 2010). This conflict between the rights of individuals granted under Indian law and the cultural beliefs surrounding caste continues to be a challenge to Indian policing efforts. For Indian law enforcement, the challenge emerges not only in affirming anti-discrimination law, but also in re-establishing trust with historically marginalized groups. Dalits, for example, have been found to be socially alienated from police or at least do not feel that law enforcement is able to safeguard them or their rights (Supreme Court of India 2018). Therefore, when rights-based approaches are offered in these societies, they are viewed as a type of intervention by individuals with limited insight of the complexities of local caste hegemonies, leading to mistrust and resistance from others. This case study from India highlights the importance of culturally literate policing and engagement with community-specific histories of exclusion.

8. Resilience and relevance of customary policing models

8.1. *Why people trust informal justice systems*

Due to their cultural embeddedness and continuity over time, informal justice systems may continue to have a strong and important claim to trust in many communities. These systems are legitimate because they are seen as versions of dispute resolution consistent with the values, norms, and traditions that societies have relied upon for generations (Merry 1988, 869–896). In a number of areas, tribes, village panchayats, or religious courts are thought to have the most legitimacy in resolving disputes, as they reflect the shared history and customs of the community (Galanter 1981, 1–47).

These systems are also uniquely personalized, relying upon someone with a certain degree of authority or respect from the

community to decide a quote or to provide an explanation of why a particular result was appropriate in the situation. For example, in tribal societies, the members have collective faith in the reasoned basis of decisions made by elders or chiefs, just as those elders and chiefs have a vested interest in resolving disputes fairly, while at the same time maintaining harmony and a good social world for their community. This type of local ownership creates a sense of procedural legitimacy to the result of conflict resolution or the moral correctness of what the elders or authorities believed was fair (Fikentscher 1991).

In addition, these systems are usually more available to individuals who may not have the capacity or knowledge to engage with formal systems of justice. Accessibility is especially salient in rural or other marginal contexts where legal institutions are either corrupt, ineffective, or simply far away. For example, in India, for many rural communities, panchayats (village councils) are the principal means of justice, not because these are the culturally preferred means but because they are available and cheap (Konoorayar 2014). Informal systems often allow for local solutions to local problems and provide a level of legitimacy, which is often missing in formal system of the state. Because informal systems are local, accessible, and culturally familiar, they also become the preferred modes of operation within communities that generally feel underserved by formal legal systems.

8.2. *Benefits of informal justice systems*

a) SPEED AND EFFICIENCY

Informal justice systems exist due to their ability to produce results much quicker and more responsively than formal legal systems. Formal legal systems, depending on the circumstances, may take months or even years, constrained by formal legal proceedings of a court (Tamanaha 2011, 1–17). In many cases, people cannot afford to wait months or years for a court decision, particularly as the urgency of the dispute increases due to the nature of the dispute. For instance, in Bangladesh, *shalish*s (village councils) are a common type of informal justice system that people use to resolve disputes, such as property disputes, family issues, or theft (Hoque and Zarif 2020, 35–50). There is no formal legal process, so *shalish* is a viable alternative because the formal legal system can be very slow or overburdened (Hoque and Zarif 2020, 35–50). Since a *shalish* can sometimes call a meeting and resolve an issue in one day, it is a much quicker way for everyone to find relief.

People who rely on informal systems do so because the process will be faster than seeking recourse in a state-run court (Chirayath et al. 2005). This efficiency is one of the primary reasons that informal justice remains a preferred choice, despite its potential to contradict formal human rights law. While speed does not guarantee fairness, it enhances perceived legitimacy in contexts where delay equates to denial.

b) CULTURAL ACCEPTANCE AND SOCIAL COHESION

In addition to their speed, informal justice systems are often culturally accepted because they are embedded within the society's historical and cultural framework (Merry 1988, 869–896). Many communities feel more comfortable using these systems because they follow local customs that have developed over generations. As a result, the findings of tribal elders, religious leaders, or community councils are not merely legal findings, but a means of preserving the fabric of the community. For instance, in many areas in Africa, communities continue to use tribal courts that are run by elders and community leaders. These systems are trusted because they are an extension of the community's identity (Chirayath et al. 2005). In countries like Kenya, where customary law is a form of practice in the rural setting, informal justice is often perceived as the most credible method of resolving disputes (McConkie 2024). These communities often elect the leaders, and these leaders are believed to be attuned, within their local context, capable of making decisions both culturally appropriate and consistent with local value systems.

c) WHY THESE TRADITIONAL SYSTEMS CAN'T BE IGNORED IN REFORM DISCUSSIONS

The normative and institutional imprint of traditional justice systems is deep and enduring. They exist within the fabric of many societies, especially in rural and marginalized places (Tamanaha 2011, 1–17). They are not just alternate means of attaining justice, but are, in many instances, the only means by which an individual interacts with laws and authority. In Africa, Asia, and the Middle East, traditional systems of justice are still central to people's lived experience of justice and social order (Ahmad and von Wangenheim 2021, 228–239; Kaime 2004, 271–273). Any discussion on legal reform, whether it be bringing the traditional justice system into formal state institutions or developing practices within traditional institutions to develop legality in

pluralistic societies, would not be realistic by ignoring or dismissing traditional systems of justice

Lawmakers and human rights supporters can work to reconcile traditional justice systems with international human rights standards by recognizing and valuing their traditional roles. In doing this, a delicate balance will be achieved, in which the law will encapsulate cultural practice but will not sacrifice fundamental rights. Reform must progress through normative translation not by erasing cultural law. To achieve rights-informed cultural practices effectively, we must operationalize rights within a culturally relevant framework, providing legitimacy and protection.

9. Hybrid approaches to justice: bridging universalism and cultural legitimacy

To try to make justice systems more congruent with the experienced moral worlds of diverse communities, some governments and organizations have attempted to adopt hybrid systems, merging rights-based approaches that emerge from international human rights law with duty-based frameworks emerging from local customs (Tamanaha 2011, 1–17). These hybrid experiments have been illustrating the possibilities and challenges of legal pluralism (Griffiths 1986, 1–55). The cases examined below illustrate both the aspiration and the structural difficulty of genuine hybridization, and inform the conditions identified at the close of this section under which hybrid models may more reliably protect individual rights. South Africa, Indonesia, and Jordan, for example, have all engaged, to some extent, in bridging those systems and creating hybrids that honor human rights and ethically adopt cultural practices for justice. These efforts have, however, highlighted how challenging this process can be, especially when local customs or practices are inconsistent or in conflict with the international standard of human rights.

a) SOUTH AFRICA: CUSTOMARY LAW AND CONSTITUTIONAL EQUALITY

Among the most examined cases of this legal incorporation can be found in South Africa. Constitutional reforms following apartheid recognized customary law and gave it equivalent status as common law, provided it did not conflict with the Constitution (Kaime 2004,

271–273). However, the fact of recognizing customary law often came at the cost of women’s rights (Constitutional Court of South Africa 2004). For example, in rural areas, matters of land and inheritance are routinely determined by traditional authorities who would enforce customary law and local norms which arguably violate constitutional principles of gender equality⁸. While the state originally sought to apply a duty-oriented approach, the lack of consistent oversight meant that discriminatory practices persisted under the guise of cultural legitimacy (Oomen 2005, 164–234). The example demonstrates the tension of legal pluralism and substantive equality, particularly when customary authority is exempt from constitutional scrutiny.

b) INDONESIA: *ADAT*, *SHARIA*, AND HUMAN RIGHTS

In Indonesia, the government tried to harmonize *adat* (customary) law with human rights, particularly in Aceh, where *Sharia*-based rules were introduced (Republic of Indonesia 2006). While these measures were meant to preserve cultural practices, they resulted in practices such as public caning, drawing criticism for violating human rights protections against cruel treatment (Amnesty International 2016). The Indonesian experience implies that hybridization of traditional and human rights law puts duty to community above individual human rights and can exacerbate inequality, particularly related to gender and minority status. These developments in Indonesia illustrate how hybridization can perpetuate illiberal practices rooted in cultural legitimacy over normative protections.

c) JORDAN: TRIBAL MEDIATION AND GENDERED JUSTICE

Similarly, Jordan’s experience with tribal dispute resolution systems, which emphasize duties to family and community, revealed the difficulty of blending local customs with formal legal frameworks (Furr and Al-Serhan 2008, 17–34). Tribal mediation, encouraged to reduce court backlogs, sometimes undermined women’s rights in family disputes, particularly in cases of domestic violence or “honor crimes” (Johnstone 2015). While these mechanisms were intended to enhance access to justice, they often reinforced patriarchal norms and discouraged victims from seeking formal legal recourse.

⁸ *Shilubana and Others v. Nwamitwa*. 2008. (CCT 03/07) [2008] ZACC 9.

d) LESSONS AND LIMITATIONS OF HYBRID MODELS

To summarize, a pattern of contradiction and complexity arises from these cases. On the one hand, considering duty-based norms can enhance the local relevance of justice processes and facilitate participation (Claassens and Ngubane 2008, 154–183). On the other hand, those same features can create obstacles to reform when local norms may conflict with universal human rights (Claassens and Ngubane 2008, 154–183). At the heart of these tensions is a disagreement between the liberal logic of individual entitlements and the communitarian logic of relational obligations. Both may offer important insights into justice processes, but integrating a co-existent framework raises the level of complexity. Moreover, as noted in these cases, integrating both could lead to revolutionary changes as well as a certain level of ambiguity, selective justice, or even a return to the status quo. The South African, Indonesian, and Jordanian cases collectively demonstrate that, in absence of robust safeguards, hybrid models consistently permit the cultural to override the normative: customary authority displaces constitutional equality, religious enforcement displaces individual protection, and community mediation displaces victims' access to formal recourse. This is not a marginal risk but a pattern, and it demands an explicit acknowledgement that the current record of hybridization, far from representing a promising middle path, reflects a structural tendency for individual rights to be the currency in which cultural accommodation is purchased. Scholars who remain critical of the hybrid approach, including Donnelly (2013) and Mutua (2001), have consistently cautioned that framing cultural accommodation as compromise risks masking the capitulation of rights under the language of pluralism.

Understanding when and how such blending works requires not just technical legal expertise, but a deep sensitivity to the local context, power dynamics, and the lived experiences of those the law is meant to protect. Based on the cases examined, this paper proposes that genuinely rights-protective hybrid models must satisfy at least four conditions: first, a clear hierarchy of norms that treats non-derogable rights as a floor beneath which no local practice may reach; second, participatory reform processes that include, in particular, the voices of those who are most frequently harmed by customary practices, women, minorities, and caste-marginalized persons; third, robust and independent oversight mechanisms capable of identifying and sanctioning the instrumentalization of cultural legitimacy by power-holders; and fourth, a commitment to

what An-Na'im (1990) terms internal cultural legitimation, which seeks to demonstrate that rights-equivalent protections are available within the moral vocabulary of the tradition itself, rather than imposed from outside it.

10. Limits of rights universalism in local contexts

Certain human rights, particularly those of women and religious freedom, conflict frequently in societies where moral authority is based on duty-centered traditions (An-Na'im 1990). This turmoil does not arise from a lack of knowledge or lack of belief in international norms, but rather from a sense of duty towards society rooted in cultural, moral and religious beliefs.

Women's rights, in particular, are often most contested in the areas of marriage, inheritance, and control over their bodies. For example, in Afghanistan, attempts to implement the law prohibiting forced marriages and domestic violence are almost always opposed by tribal elders and religious leaders alike who found these initiatives to be against their traditions of patriarchal authority (Human Rights Watch 2012). The 2009 Shiite Personal Status Law, for example, allowed husbands to withhold sustenance from wives who refused sexual relations (Islamic Republic of Afghanistan 2009, art. 132). Such laws have drawn protests from the international community, but indicate that in Afghanistan, religious frameworks supported norms are prioritized over individual autonomy. Similar conflicts exist over women's rights in Nigeria because of the parallel application of customary law, *Sharia* law, and federal law⁹ (Amnesty International 2012). The coexistence of different legal philosophies leads to contradictory results across jurisdictions, especially related to issues of gender equality and personal status.

Religious freedom also frequently becomes a source of conflict. For example, in Egypt, Christian converts from Islam have suffered both formal and informal oppression despite the constitutional protection of religious freedom (International Christian Concern 2025; Morning Star News 2025; Brink 2025). Courts and bureaucracies frequently deny identity card changes, effectively leaving converts stateless in their own country (Fayez 2025). This administrative denial exhibits a deeper

⁹ *Amina Lawal v. State of Katsina*. 2003. Sharia Court of Appeal, Katsina State, Nigeria, September 25.

normative resistance to religious pluralism, where identity is strictly regulated by communal and theological limitations.

These examples and cases raise an important and persistent question in the human rights discourse: should rights be applied universally, or are there opportunities to adapt or interpret them through locally legitimate moral vocabularies to increase acceptability? Scholars like Abdullahi An-Na'im argue that unless rights are adapted and interpreted through culturally legitimate contexts, they will always emerge as imposed rights and create backlash (Sidahmed 2011). This is an important insight, but it must be carefully distinguished from the position that cultural acceptability can ever justify the violation of non-derogable rights. The internal legitimation of rights is a strategy for their more effective realization; it is not a process by which those rights may be qualified or extinguished. As Donnelly (2013) argues, the universality of human rights does not require cultural uniformity in their expression or enforcement, but it does set an irreducible minimum below which no cultural argument provides legitimate justification. The task, therefore, is not to choose between universalism and cultural legitimacy, but to pursue a rights-protective pluralism that holds both commitments simultaneously, insisting on the floor while allowing diversity in the architecture built above it.

Conclusion

The present study has explored the consequential normative tensions that exist between a rights-based policing model grounded in the liberal democratic tradition and a duty-based moral framework that are common to many tradition-based societies. Even though international human rights framework puts a greater emphasis on individual rights and protection, justice is often understood through the perspective of relational obligations, social harmony, and moral responsibility in societies around the world. These distinctions between the frameworks are not just abstract; they are an essential part of the context in which policing is understood, practiced, and contested.

This study has highlighted it through a creative and multi-disciplinary analysis of philosophical traditions, legal instruments and settled case law. Brief case studies of Nigeria, Egypt, and India, has showcased that the imposition of universal human rights framework very often meet with resistance for a range of reasons. Informal justice

systems, such as the jirga, panchayat, and religious courts, persist not in spite of international law, but because they resonate with local understandings of legitimacy, authority, and justice.

Rather than framing this difference as a binary between universality and relativism, this paper argues that rights-based and duty-based frameworks occupy different positions along a normative continuum, and that the central challenge for reform is not to choose between them but to develop strategies for embedding non-derogable rights within culturally legitimate moral frameworks. Where informal systems provide accessibility, familiarity, and social cohesion, those assets should be engaged, not discarded. But where those same systems systematically exclude or harm individuals, particularly women, minorities, and the socially marginalized, reform must insist upon the floor of rights protection, even as it remains sensitive to context in everything built above it.

In the end, the question is not whether rights or duties should prevail, but how justice can be reimagined in ways that are both normatively principled and culturally resonant. By situating police reform at the intersection of law, culture, and philosophy, this paper invites scholars, policymakers, and practitioners to move beyond universalist prescriptions and toward context-sensitive strategies that embed rights within existing moral frameworks. Only then will policing be something other than a tool for enforcement and be a real vehicle for justice in morally plural societies.

References

- Abou El Fadl, Khaled. 2001. *Speaking in God's name: Islamic law, authority, and women*. Oxford: Oneworld Publications.
- Brink, Lizzie F. 2025. «What it's like to live out your faith as a Christian in Egypt.» *ADF International*. April 9. Accessed October 21, 2025: <https://adfinternational.org/commentary/egypt-christians-religious-freedom>
- Agnes, Flavia. 2011. *Family law: Family laws and Constitutional claims*. Vol. 1, Delhi: Oxford University Press.
- Ahmad, Jawad, and Georg von Wangenheim. 2021. «Access to justice: an evaluation of the informal justice systems.» *Liberal Arts and Social Sciences International Journal* 5(1): 228–244.
- Alemika, Etannibi E. O. 1999. «Police community relations in Nigeria: what went wrong?» Paper presented at the Seminar on the Role and Function of the Police in a Post-Military Era, Lagos, Nigeria.
- Al-Sharmani, Mulki, ed. 2013. *Feminist activism, women's rights, and legal reform*. London: Zed Books.

- Amnesty International. 2012. *Nigeria: Trapped in the cycle of violence*. AFR 44/043/2012. Accessed April 27, 2025: <https://www.amnesty.org/en/documents/afr44/043/2012/en/>
- Amnesty International. 2016. *Indonesia: End caning as a form of punishment in Aceh*. ASA 21/3853/2016. Accessed April 29, 2025: <https://www.amnesty.org/en/documents/asa21/3853/2016/en/>
- An-Na'im, Abdullahi A. 1990. *Toward an Islamic reformation: civil liberties, human rights, and international law*. Syracuse, NY: Syracuse University Press.
- Auda, Jasser. 2008. *Maqasid Al-Shariah as philosophy of Islamic law: a systems approach*. Herndon, VA: International Institute of Islamic Thought.
- Baxi, Pratiksha. 2010. «Justice is a secret: compromise in rape trials.» *Contributions to Indian Sociology* 44: 207–33.
- Bell, Daniel A. 2006. *Beyond liberal democracy: political thinking for an East Asian context*. Princeton, NJ: Princeton University Press.
- Bentwich, Norman. 1948. «The legal system of Palestine under the Mandate.» *Middle East Journal* 2: 33–46.
- Berger, Maurits, and Nadia Sonneveld. 2010. «Sharia and national law in Egypt.» In *Sharia incorporated: a comparative overview of the legal systems of twelve Muslim countries in past and present*, edited by Jan Michiel Otto, 51–88. Leiden: Leiden University Press.
- Bombay High Court (Nagpur Bench) 2010. *State of Maharashtra v. Gopal Sakru Binjewar and Others*. Criminal Appeal Nos. 577–578 of 2009.
- Bowen, John R. 2007. *Why the French don't like headscarves: Islam, the state, and public space*. Princeton, NJ: Princeton University Press.
- Bowling, Ben, and Coretta Phillips. 2007. «Disproportionate and discriminatory: reviewing the evidence on police stop and search.» *The Modern Law Review* 70: 936–61.
- Cairo Misdemeanor Court. 2020. *Judgment on domestic violence case*. Cairo, Egypt.
- Chan, Janet B.L. 1997. *Changing police culture: Policing in a multicultural society*. Cambridge: Cambridge University Press.
- Chirayath, Leila, Caroline Sage, and Michael Woolcock. 2005. *Customary law and policy reform: Engaging with the plurality of justice systems*. Washington, DC: World Bank.
- Claassens, Aninka, and Sizani Ngubane. 2008. «Women, land and power: The impact of the communal land rights act.» In *Land, Power & Custom*, edited by Aninka Claassens and Ben Cousins, 154–83. Cape Town: UCT Press.
- Commins, David D. 2015. *Islam in Saudi Arabia*. London: I.B. Tauris.
- Constitutional Court of South Africa. 2004. *Bhe and Others v. Magistrate, Khayelitsha and Others*. ZACC 17; 2005 (1) SA 580 (CC).
- Cook, Michael. 2000. *Commanding right and forbidding wrong in Islamic thought*. New York: Cambridge University Press.
- Davis, Donald R., Jr. 2010. *The spirit of Hindu law*. Cambridge: Cambridge University Press.

- Donnelly, Jack. 2013. *Universal human rights in theory and practice*. 3rd ed. Ithaca, NY: Cornell University Press.
- Dumont, Louis. 1980. *Homo Hierarchicus: the caste system and its implications*. Chicago: University of Chicago Press.
- Elias, Taslim O. 1956. *The nature of African customary law*. Manchester: Manchester University Press.
- Englund, Harri. 2006. *Prisoners of freedom: human rights and the African poor*. Berkeley: University of California Press.
- Factor, Roni, and Yoav Mehozay. 2023. «Deeply embedded core normative values and their relationship with perceptions of legitimacy.» *Policing: A Journal of Policy and Practice* 17.
- Fayez, Said. 2025. «Converts to Christianity in Egypt: Crises without end.» *Coptic Solidarity*, October 9. Accessed October 21, 2025: <https://www.copticsolidarity.org/2025/10/09/converts-to-christianity-in-egypt-crises-without-end/>.
- Fikentscher, Wolfgang. 1991. «Review of harmony ideology.» *The American Journal of Comparative Law* 39: 454–58.
- Finnis, John. 1980. *Natural law and natural rights*. Oxford: Clarendon Press.
- Furr, Ann, and Muwafaq Al-Serhan. 2008. «Tribal customary law in Jordan.» *South Carolina Journal of International Law and Business* 4: 17–34.
- Galanter, Marc. 1981. «Justice in many rooms: Courts, private ordering, and indigenous law.» *The Journal of Legal Pluralism and Unofficial Law* 13: 1–47.
- Government of Japan. 2016. «Sharing the community-based police model.» *JapanGov*, Spring. Accessed April 27, 2025: https://www.japan.go.jp/tomodachi/2016/spring2016/sharing_police_model.html.
- Griffiths, John. 1986. «What is legal pluralism?» *The Journal of Legal Pluralism and Unofficial Law* 18: 1–55.
- Hallaq, Wael B. 2004. *The origins and evolution of Islamic law*. Cambridge: Cambridge University Press.
- Hoque, Muhammad R., and Muhammad M. Zarif. 2020. «Traditional Shalish system for rural dispute resolution in Bangladesh.» *IIUC Studies* 16: 35–56.
- Human Rights Watch. 1999. *Broken people: caste violence against India's 'untouchables'*. New York: Human Rights Watch.
- Human Rights Watch. 2012. *'I had to run away': The imprisonment of women and girls for 'moral crimes' in Afghanistan*. New York: Human Rights Watch.
- India. 1989. *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*. Act No. 33 of 1989.
- International Christian Concern. 2025. «Christian convert charged with terrorism in Egypt.» *International Christian Concern*, July 30. Accessed September 3, 2025: <https://persecution.org/2025/07/30/christian-convert-charged-with-terrorism-in-egypt/>.
- Islamic Republic of Afghanistan. 2009. *Shiite Personal Status Law*. Kabul: Government of Afghanistan.
- Jauregui, Beatrice. 2016. *Provisional authority: police, order, and security in India*. Chicago: University of Chicago Press.

- Johnstone, Naomi. 2015. *Tribal dispute resolution and women's access to justice in Jordan*. Amman: WANA Institute.
- Kaime, Thoko. 2004. «Review of customary aw in South Africa, by T.W. Bennett.» *Journal of African Law* 48: 271–273.
- Kamali, Mohammad H. 2008. *Shari'ah Law: an introduction*. Oxford: Oneworld Publications.
- Kane, Pandurang V. 1930. *History of Dharmashāstra*. Vol. 1. Pune: Bhandarkar Oriental Research Institute.
- Kant, Immanuel. 2012. *Groundwork of the metaphysics of morals*. 2nd ed. Cambridge: Cambridge University Press.
- Kaste, Martin. 2018. «For local cops in Germany, no talk of 'Sanctuary cities'.» *NPR*, July 30, 2018.
- Klein, George C. 2024. «Real policing: an exploration in police legitimacy.» *Journal of Police and Criminal Psychology* 39: 390–401.
- Konoorayar, Vishnu. 2014. *Old wine in new bottle: Access to justice in India and effectiveness of Gram Nyayalayas*. January 15. Accessed April 27, 2025: <https://ssrn.com/abstract=2534901>
- Locke, John. 1988. «Two treatises of government». In *Cambridge texts in the History of Political Thought*, edited by Peter Laslett. Cambridge: Cambridge University Press.
- Lubin, Timothy. 2007. «Punishment and expiation: overlapping domains in Brahmanical law.» *Indologica Taurinensia* 33: 93–122.
- McConkie, Daniel S., Jr. 2024. «Promoting and reforming Kenya's customary justice systems in criminal cases.» *Emory International Law Review* 38: 343–388.
- Mendelsohn, Oliver, and Marika Vicziany. 1998. *The untouchables: subordination, poverty and the State in modern India*. Cambridge: Cambridge University Press.
- Merry, Sally E. 1988. «Legal pluralism.» *Law & Society Review* 22: 869–896.
- Mokgoro, Yvonne. 1998. «Ubuntu and the law in South Africa.» *Buffalo Human Rights Law Review* 4: 1–6.
- Morning Star News. 2025. «Two Christians in Egypt released after three years in jail.» February 4. Accessed April 27, 2025: <https://morningstarnews.org/2025/02/two-christians-in-egypt-released-after-three-years-in-jail/>.
- Mutua, Makau W. 2001. «Savages, victims, and saviors: The metaphor of human rights.» *Harvard International Law Journal* 42: 201–245.
- Nwauche, Enyinna S. 2010. «The Constitutional challenge of the integration and interaction of customary and received English Common Law in Nigeria and Ghana.» *Tulane European and Civil Law Forum* 25: 37–63.
- Oomen, Barbara. 2005. *Chiefs in South Africa: Law, power & culture in the post-Apartheid Era*. New York: Palgrave Macmillan.
- Panning, Hunter A. 2024. «Ubuntu: Uniting hearts and transforming public safety for a better tomorrow.» *Police* 1, June 16. Accessed April 27, 2025: <https://www.police1.com/community-policing/ubuntu-uniting-hearts-and-transforming-public-safety-for-a-better-tomorrow>.

- Parekh, Bhikhu. 2001. «Rethinking multiculturalism: cultural diversity and political theory.» *Ethnicities* 1: 109–115.
- People's Action Party. 2019. «Efforts to protect and defend Singapore's social cohesion.» *PAP News*, April 11.
- Phillips, Naomi. 2017. «Challenges to police reform in post-apartheid South Africa.» *On Politics* 11(1): 53–68.
- Pkalya, Ruto, Mohamud Adan, and Isabella Masinde. 2004. *Indigenous democracy*. Nairobi: ITDG–Eastern Africa.
- Ramose, Mogobe B. 1999. *African philosophy through Ubuntu*. Harare: Mond Books.
- Rani, Bittoo. 2014. «Sharia Courts as informal justice institution in India.» *International Journal of Humanities, Social Sciences and Education* 1: 129–139.
- Republic of Indonesia. 2006. *Law No. 11 of 2006 on the Governing of Aceh*. Jakarta: Government of Indonesia.
- Rousseau, Jean-Jacques. 1968. *The social contract*. London: Penguin Classics.
- Sharma, Arvind. 2000. *Classical Hindu thought*. Oxford: Oxford University Press.
- Shan, Wei. 2014. «China's initiatives in 'social management'.» In *Governing Society in Contemporary China*, edited by Lijun Yang and Wei Shan, 123–140. Singapore: World Scientific Publishing.
- Shell-Duncan, Bettina, Zhuzhi Moore, and Carolyne Njue. 2017. *The medicalization of female genital mutilation/cutting: What do the data reveal?* New York: Population Council.
- Sidahmed, Abdel S. 2011. «Review of Islam and the secular state.» *Windsor Yearbook of Access to Justice* 29: Article 3.
- Skolnick, Jerome H. 1993. «Justice without trial.» In *Police innovation and control of the police*, edited by L. Green, D. Weisburd, and C. Uchida, 13–31. New York: Springer.
- Supreme Court of India. 1993. *State of Karnataka v. Appa Balu Ingale*. AIR 1993 SC 1126.
- Supreme Court of India. 2018. *Subhash Kashinath Mahajan v. State of Maharashtra*. AIR 2018 SC 1498.
- Tamanaha, Brian Z. 2011. «The rule of law and legal pluralism in development.» *Hague Journal on the Rule of Law* 3: 1–17.
- Teltumbde, Anand. 2010. *The persistence of caste: The Khairlanji murders and India's hidden apartheid*. London: Zed Books.
- Tu, Weiming. 1993. «Confucianism.» In *Our religions*, edited by Arvind Sharma, 141–227. San Francisco: Harper San Francisco.
- Tutu, Desmond M. 1999. *No future without forgiveness*. New York: Doubleday.
- Tyler, Tom R. 2003. «Procedural justice, legitimacy, and the effective rule of law.» *Crime and Justice* 30: 283–357.
- United Nations General Assembly. 1948. *Universal Declaration of Human Rights*. Paris: United Nations.

- Van der Veer, Peter. 2004. «The production of Hindu-Muslim violence in contemporary India.» *Contemporary Sociology* 33: 483–484.
- Walker, Samuel. 2014. *The new world of police accountability*. 2nd ed. Thousand Oaks, CA: SAGE Publications.
- Wilson, Richard A. 2001. *The politics of truth and reconciliation in South Africa*. Cambridge: Cambridge University Press.
- Wortley, Scot, and Akwasi Owusu-Bempah. 2011. «The usual suspects: Police stop and search practices in Canada.» *Policing and Society* 21: 395–407.