

CONTEMPORARY HUMAN RIGHTS: IRRELEVANT WESTERN IMPOSITION OR UNIVERSALLY RELEVANT CONCEPT?

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INTRODUCTION

Human rights have for long been plunged in the universalism-relativism debate. Many “cultural relativists” have pointed out the predominantly Western origin, conception and to the extreme applicability of human rights. An-na’im for example contends in relation to the drafting of the Universal Declaration of Human Rights that “as for the peoples of Africa and Asia, the format and process of adopting the declaration did not permit the effective participation of their indigenous cultures.”¹ Others have rather stated that though the shaping of human rights was predominantly Western there was a strong non-Western representation. Closely related to this has been the issue of whether or not human rights are relevant to the whole world. We argue in this paper that the origins of human rights in its current format was initially shaped by mostly Western actors but with strong non-Western representation . We also argue that the field of human rights has had several influences from different areas and that no matter how we look at the origins human rights remain relevant to all human beings irrespective of their origins or characteristics. However, we argue for local contexts to be taken into consideration in the application of human rights.

¹ An-Na’im, A. A. “Problems of Universal Cultural Legitimacy for Human Rights”, in: An-Na’im and Dend (eds) *Human Rights in Africa: Cross-Cultural Perspectives*, Washington, D C: The Brookings Institution, 1990, p. 351

ARGUMENTS FOR WESTERN ORIGIN AND RELEVANCE OF HUMAN RIGHTS

Mutua points out the strong Western origin of the current human rights idea when he contends that the principles and norms spread by the United Nations since 1945 bear a European identity and one of the main aspects of this is the propagation of human rights “which grow out of Western liberalism and jurisprudence” with the West succeeding “to impose its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception.”²

The view of the heavy Western origin and irrelevance of human rights to the rest of the world is presented by Donnelly who indicates that “a recurrent theme in the contemporary literature is that human rights, because of their Western origin, are inappropriate or irrelevant to contemporary Third World problems and needs”.³

The proponents of this view that human rights have a strongly Western ‘genetic constitution’ have a number of bones to pick with this state of affairs. They have pointed out that human rights focuses more on the individual at the expense of the community, which is more important in most non-Western cultures. As Osiatynski notes, “relativists assume that human rights put an individual above the community and say this is not acceptable in non-Western countries.”⁴ Pollis in the same vein stats that “cultural relativists...argue that fundamental values are culturally specific and that the communal group-whatever that might be (tribe, village, or kinship), and not the individual-is the basic social unit.”⁵

² Mutua, Makau. “Savages, Victims and Saviors: The Metaphor of Human Rights”, 42 Harvard International Law Journal, 2001, pp 214-215

³ Jack Donnelly. *Universal Human Rights in Theory and Practice*. Cornell University Press, 1989, p 62

⁴ Osiatynski, Wiktor. “The Universality of Human Rights.” (An English translation of the entry to the Italian *Enciclopedia Dei Diritti Umani*) 2007, pp 6-7

⁵ Pollis, Adamantia. “A New Universalism.” In Pollis, Adamantia, and Schwab, Peter (eds) *Human Rights, New Perspectives, New Realities*. Lynne Rienner, 2000, pp 11-12

Another issue raised has been the much greater focus on civil and political rights than social and economic rights, which are argued to be more relevant in non-Western countries. Mutua states that “the ravages of globalization notwithstanding, INGOs have largely remained deaf to calls for advocacy on social and economic rights”⁶. Human rights have been viewed in this sense as being insufficient in addressing the challenges and problems of non-Western societies. Osiatynski notes that “it is claimed that the idea of human rights does not help to solve the most important problems of non-Western societies [...] that human rights conflict with important development goals of non-Western nations and can be sacrificed for the benefit of such goals.”⁷

UNIVERSAL CONCEPTION AND RELEVANCE

Despite the fact that the origin of the human rights concept had a high Western influence especially during the drafting of the Universal Declaration of Human Rights it also had the presence and strong influence of non-Western delegates. After independence, this has not only been ratified by non-Western states but also translated into national constitutions. Moreso, the subsequent two Covenants were drafted with the heavy participation of non-Western states. Culture cannot be used as an argument to deprive people of fundamental rights. Reid notes that “Culture *does* change with time...Evoking a static and vague concept of “tradition” not only fails to account for these shifts, it fossilizes society.”⁸ It is true that the specific characteristics of some societies have at times been ignored or misjudged in the spread of human rights but this does not mean that most of its principles

⁶ *Supra*, note 2, p 217

⁷ *Supra*, note 4, p 3

⁸ Reid, Graeme. “The Trouble with Tradition”, <http://www.hrw.org/worldreport/2013/essays/trouble-tradition>

can be applied across the world. Irrespective of their origin and despite the challenges, human rights remain relevant to all human beings.

Donnelly argues that “although they are Western in origin and thus historically particular...human rights are of near universal contemporary relevance. Cotemporary social conditions have given the idea and practice of human rights wide applicability.”⁹ Using the car-seat belt metaphor, Donnelly indicates that human rights are similar to seat belts invented to protect passengers in a car from the threats of accident or harm. Though these seat belts were invented in the West, they were later needed in other parts of the world as cars became to be used there too with all the risks and threats involved. Rights are therefore as seat belts, which protect individuals. Donnelly further points out that “Human rights are the best-I would suggest the only effective-political device yet devised by human ingenuity to protect individual dignity against the standard threats of modern society.”¹⁰ There is rather greater support for the human rights movement than is most often demonstrated by skeptics, most of whom use such arguments for political ends. Osiantynski posits that “Cultural relativism and the rejection of the universality of rights were often used by authoritarian and dictatorial regimes to justify oppression.”¹¹

Human rights have universal relevance because all humans have uniting characteristics and face similar challenges especially in the world of today. As has been aptly pointed out, “all cultures know the concepts of justice, integrity and mutual respect. Harmony, humanity, brotherhood (and sisterhood) are also universal [...] suffering is similar everywhere.”¹²

⁹ *Supra*, note 3, p 50

¹⁰ *Supra*, note 3

¹¹ *Supra*, note 4, p 3

¹² *Supra*, note 4, p 4

Human beings be it in Africa, Asia, Europe or America face similar challenges which require similar approaches in bringing about solutions. Human Rights are innate to human beings irrespective of characteristics such as colour, race, ethnicity, sex, religion and social status. I usually use the metaphor of blood to talk about human rights: Human rights are relevant to and apply to all human beings who have red blood flowing in their veins. This implies that it is relevant to and applies to all human beings. Human rights are about the human identity, the human drive to (re)gain or maintain dignity and value. Challenges such as climate change, armed conflict, access to health, housing and education are universal.

Human rights have rather done much good and are indispensable the world over. As David Kennedy notes, “the international human rights movement has done a great deal of good, freeing individuals from great harm, providing and emancipatory vocabulary and institutional machinery for people across the globe, raising standards by which governments judge one another”.¹³

NEED FOR CRITICAL THINKING ON HUMAN RIGHTS

There is, however, the need to take a critical look at the weaknesses or challenges of the human rights in its current form in order to make human rights more effective, flexible and able to accommodate to varying society-specific realities and challenges. Zechenter argues that “Many agree that [...] universal rights should be modified to conform with local cultural and religious norms.”¹⁴

¹³ David Kennedy, “The International Human Rights Movement: Part of the Problem?”, 15 Harvard Human Rights Journal, 2002, 101

¹⁴ Zechenter, Elizabeth M. *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, p. 1, Journal of Anthropological Research, Vol. 53, No. 3, pp. 319-347, University of New Mexico

Human rights therefore have universal relevance irrespective of their origin. Culture rather presents an opportunity for human rights to gain legitimacy across the world. Mutua contends that “The multiculturalization of the corpus could be attempted in a number of areas: balancing between individual and group rights, giving more substance to social and economic rights, relating rights to duties and addressing the relationship between the corpus and economic systems.”¹⁵ Osiatynski on his part argues that the universality of the philosophy of human rights should be separated from the universality of human rights because whereas the former is not universal the latter is.¹⁶ One could re-echo the optimistic noted sounded by An-na'im:

*Despite the initial lack of inadequacy of concern with universal cultural legitimacy during the formulation and adoption of international standards of human rights, and despite the inadequacy of subsequent efforts to supplement that deficiency, those standards remain to be improved rather than abandoned... It is not too late to correct the situation by undertaking cross-cultural work to provide the necessary internal legitimacy for human rights standards... The inherent dignity and integrity of the human person, taken as the fundamental underlying value of all human rights, can be extended beyond barriers of sex, race, religion...through the principle of reciprocity...Thus the full range of human rights can gain cultural legitimacy everywhere in the world.*¹⁷

Navi Pillay said on the occasion of the 2013 Human Rights Day that “significant achievements have been made in ensuring basic rights for all people, "regardless of political, economic and cultural systems", but also emphasised on the serious need for progress.”¹⁸

¹⁵ *Supra*, note 2, p 243

¹⁶ *Supra*, note 4, p 10

¹⁷ *Supra*, note 1

¹⁸ www.aljazeera.com/humanrights/2013/12/un-rights-chief-marks-human-rights-day-20131210105316708387.html

HUMAN RIGHTS: THE GOOD, THE BAD AND THE UGLY?

The concept of human rights as well as the human rights movement came along with much enthusiasm and optimism. However, much water has passed under the bridge and debates have been raging on in relation to the strengths and weaknesses, the successes and failures of the human rights discourse and movement. It has been difficult for some to say clearly whether human rights are good or bad. As Kayum Ahmed opines, “The simple notions of good and bad we ascribe to particular behaviour have been considered by numerous writers and philosophers... In dealing with the complexities of human behaviour, these writers have helped me to make sense of human nature in the application of a human rights discourse. The truth is that I am still trying to figure things out.”¹⁹ Some extreme critics have viewed it as a still-born baby while others have rather considered it as the best available tool at moment and which in the process of growth and improvement. We shall examine the good and the bad of human rights in this essay before drawing a conclusion.

One of the negative aspects of human rights is that human rights have become the all-encompassing language or conceptual category. Thus, anything can be given the label ‘human rights’ for it to have justification, legitimacy or excuse. It has been pointed out that “Even in the human rights field there is often no clear distinction between the good guys and the bad guys”²⁰. In this light, Megret calls attention to the fact that “Human rights are [...] what allows international financial institutions to dictate huge conditions to the attribution of loans.”²¹

¹⁹ Kayum, Ahmed *Human rights: The good, the bad and the large grey area in between*. <http://mg.co.za/article/2013-01-11-00-human-rights-the-good-the-bad-and-the-large-grey-area-in-between>

²⁰ *Ibid*, note 19

²¹ Gianluigi Palombella. “The Abuse of Rights and the Rule of Law” in Adras Sajo (ed) *Abuse: The Dark Side of Fundamental Rights*. Eleven International Publishing, 2006, pp 5-6

This has also been the case of the so-called humanitarian interventions where military means have been used in the name of human rights and in the process destroying the very purpose of it. As Palombella states, "...the 'dark side' of rights emerges in many areas: at an international level, in humanitarian interventionism; in democratic multicultural societies, and in democracies in transition. The denial of rights in the name of rights is spreading under many forms."²²

Another ugly side of human rights is that it is indeterminate or inconclusive. Human rights have remained in a cloud of inconclusiveness with specific meanings being elusive, vague or even filled with utopia. Human rights have thus been said to promise more than can be delivered²³. As David Kennedy states, "taken together, belief in these various false promises demobilizes actors from taking other emancipatory steps and encourages a global misconception of both the nature of evil and the possibilities of good."²⁴ Linked to this is the fact that human rights are not 'trumps' as has been claimed by some. Very few rights are absolute because they are full of legal possibilities for limitations or derogations. This has opened the doors for gross abuse. In addition, its inconclusive nature leaves human rights in the hands of the judges and technocrats who are the ones who end up being the ones to interpret human rights²⁵.

A related aspect concerns the 'inflation of rights'. The increase in the number and extent of rights as well as a multiplication of instruments for their protection has rather had a negative impact on the very purpose of rights. Rights rather end up conflicting with themselves and with each other and lead to further conflict and fragmentation of society. Palombella points out that "References to rights,

²² *Ibid*, note 21

²³ David Kennedy, "The International Human Rights Movement: Part of the Problem?", 15 *Harvard Human Rights Journal*, 2002, p 116

²⁴ *Ibid* note 23, p 101

²⁵ Megret, Frederic. "Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes", *McGill University Working Paper Series*, 2010, p. 5

especially in an attempt to promote guarantees for human rights or fundamental rights at a global level, have become so persistent to induce fears of a universal inflation of such rights or of empty rhetoric.”²⁶

Further compounding this is the fact that human rights are usually more formalistic and intellectual than practical, most often entwined in academic debates and formalistic rituals. Therefore, there has been more focus on ratification, professionalization and intellectualisation of human rights, which make them far from the reality and touch of those at the grassroots.

Human rights are generally demonstrated as being inclusive but in reality, this is not the case. The definition of human rights usually depends on the majority or those in power in a democratic society. This leads to the sidelining of groups such as women, children and sexual minorities whose concerns have at one point or another been considered not as human rights per se.²⁷ Power relations thus become paramount in such situations, a fact human rights often ignores. As Mutua puts it, “...the issue of power is largely ignored in the human rights corpus.”²⁸ Human rights have thus been seen as part of the problem and not just part of the solution.²⁹

A major attack on human rights as they have developed has been from the relativists who condemn the very foundation of human rights particularly claims of universality. They have attacked human rights as being a western imposition on others, especially starting with the Universal Declaration of Human Rights, which to them does not reflect universalism. An-na'im argues that “As for the peoples

²⁶ *Supra*, note 21, p 6

²⁷ *Supra*, note 25, p 7

²⁸ Mutua, Makau. “Savages, Victims and Saviors: The Metaphor of Human Rights”, 42 *Harvard International Law Journal*, 2001, p 207

²⁹ See David Kennedy, “The International Human Rights Movement: Part of the Problem?”, 15 *Harvard Human Rights Journal*, 2002, pp 101-125

of Africa and Asia, the format and process for adopting the declaration did not permit effective participation of their indigenous cultures³⁰. Furthermore, the greater focus on civil and political rights has been viewed as reflecting more of the Western views. They have also pointed out the fact that human rights put individuals above the community does not reflect African and Asian societies. In similar vein, relativists point out the fact that human rights do not solve the challenges of non-Western societies.

However, the idea of human rights is not a completely bleak one as may appear from the above arguments. As Mutua points out, criticism “does not mean to suggest that human rights are bad per se or that the human rights corpus is irredeemable.”³¹ Human rights have had and still have a very positive impact on different societies and peoples across the world. All the above arguments can be seen more as challenges than failures of human rights. Even many critics of human rights have expressed their wish for reconstruction and improvement rather than destruction of the idea of human rights. Donnelly also argues that “Human rights are the best...political device yet devised by human ingenuity to protect individual dignity against the standard threats of modern society.”³²

Human rights are relevant to all human beings as they guarantee protection. Donnelly contends that “although they are Western in origin and thus historically particular...human rights are of near universal contemporary relevance. Cotemporary social conditions have given the idea and practice of human rights wide applicability.”³³ Using the car-seat belt metaphor, Donnelly indicates that human rights are similar to seat belts invented to protect passengers in a car from the threats of accident or

³⁰ An-Na'im, A. A. “Problems of Universal Cultural Legitimacy for Human Rights”, in: An-Na'im and Deng (eds) *Human Rights in Africa: Cross-Cultural Perspectives*, Washington, D C: The Brookings Institution, 1990, p. 351

³¹ *Supra*, note 28, p 210

³² *Supra*, note 3, p 67

³³ *Supra*, note 3, p 49

harm. Though these seat belts were invented in the West, they were later needed in other parts of the world as cars became to be used there too with all the risks and threats involved.

Human rights are indispensable for the protection of the individual in light of economic and technological development of today especially with the dangers brought about by globalisation. Osiatynski clearly demonstrates this when he says “Technology creates new threats to human security and life, to privacy and to other basic rights. It also makes an individual more susceptible to the abuse of power- not only by its own state but also other actors, including multinational corporations, private persons and terrorist networks. Similarly, the universal need for human rights increases with modernization and a growing role of the modern state. Jack Donnelly demonstrated in a modernizing society human rights are the best instruments to protect human dignity, to realize goals of development, to respect social justice and to assure stability.”³⁴

Human rights are an inherent characteristic of being human and therefore are relevant throughout the world. The fact that human rights instruments have been widely ratified and translated into so many national constitutions and other legal frameworks is indicative of its usefulness worldwide.

The concept of Human rights if effectively used ensures accountability, development, justice, harmony and growth. If effectively enforced it offers a chance for equality and for participation as each individual member of society is given a voice.

Human rights therefore have both a good and ugly side to it. Mutua aptly brings this out by asserting that “There is little doubt that there is much to celebrate in the present human rights corpus just as

³⁴ *Supra*, note 4, p 4

there is much to quarrel with”³⁵. The idea of human rights could be the best available tool for protecting and guaranteeing human dignity, meaningful existence and development, if effectively used. It has been pointed out that “human rights can play a role in changing the unjust international order, particularly the imbalances between the West and the Third World.”³⁶ What is needed is an honest, deep and committed reconstruction process to surmount the challenges identified to make human rights as universally effective, legitimate as possible.



³⁵ *Supra*, note 28, p 245

³⁶ *Supra*, note 4