

International human rights norms



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We live in a constantly changing and evolving world. The remarkable advances in the biotechnology, telecommunications and transportation in addition to the emergence of new regional political alliances and the increasing integration of the markets have led to unprecedented demographic shifts. As a result of all these factors, which we can be defined as globalisation, previously isolated peoples were being brought together either voluntarily or involuntarily. This confluence of peoples and cultures led to the so called pluralism, which is the diversity of views and perceptions of certain ideas and concepts in contrast to a single approach or way of interpretation.

One of those concepts which have been a subject of a huge international debate and scrutiny is the concept of human rights. As defined by Donnelly ‘ human rights are those that protect those things that are necessary for a life of dignity or for a “ richer and more fully human” life’.[1]One of the main ideologies of human rights on a national scale is cultural relativism. People who support the idea of cultural relativism think that most (or some) human rights depend on the cultural context since they are encoded in the particular culture and therefore when implementing international human rights standards we should take into account state’s particular culture. In this essay, I will argue in favour of neither of the two theories but rather in support of a third one – relative universality.

Arguments in favour of cultural relativism

Firstly, I will begin with examining the cultural relativists’ arguments. The term “ culture” is often used loosely by advocates of both universalism and cultural relativism, so let me clarify its meaning. A good definition of culture is the one proposed by Reidel – ‘ a set of shared meanings, norms, and

practices that form a comprehensive world view that serves to unite a group and contribute to the identity of its members'.[2]There are two most essentialized concepts of culture – culture as tradition and culture as essence.[3]Cultural relativism is a theory established by the anthropologist Franz Boas. Elvin Hatch says that ' Boasian relativism implies that principle of right and wrong do have some validity, but a very limited one, for they are legitimate only for the members of the society in which they are found'. [4]According to the Boasian relativism we should not be indifferent towards other ways of life and we should respect and approve them. The most prominent argument in favour of cultural relativism is that it preserves the autonomy and the self-determination of a state and its citizens. Another argument is the research argument, namely, that the researches show that different cultures have different views on morality and therefore different views on human rights. Consequently, since the different states interpret human rights in a different way international human rights standards cannot be achieved and human rights should rather be interpreted in the context of the culture of the particular state. Furthermore, cultural relativism is supported by the tolerance argument which states that each country should be tolerant towards other countries and their culture. A fourth argument in favour of cultural relativism is the one given by Abdullahi An-Na'im. He argues that there are states such as most of the African and Asian countries which did not actually participate in the formulation of the Universal Declaration of Human Rights 1948[5]and even though they did participate in the formulation of the subsequent instruments they did so on the basis of an establish framework and philosophical assumptions adopted in their absence.[6]Harris-Short adds to this argument by saying that it is only the

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state that agreed on the terms of the international treaties and not state's individuals. Therefore, international human rights are illegitimate since the consent of the internal population of a state is not present.[7] Another argument given by cultural relativists is that if we assume that human rights are universal this would make democracy dangerous since with the rise of international policies which are determined by normative claims of ethics and morality, it would be the Western elites and not the minorities which will lead.[8] A huge adherent to the cultural relativism theory is the American Anthropological Association, which in its submission to the United Nations Commission on Human Rights in 1947, argues that culture plays a vital role in one's life from the moment of his birth and it shapes not only his behaviour but also his thoughts and aspirations.[9]

Arguments against cultural relativism

A strong argument against cultural relativism is the one given by John Tilley. He says that cultural relativism as a theory lacks the support needed in order to become the dominant human rights theory.[10] He also argues that 'no consensus exists among relativists about how best to defend their thesis (some prefer the tolerance argument, others the research argument, and so on) or even about how to define it'.[11] Another argument is that cultural relativism is often used as a justification of malpractices. As Donnelly says, cultural relativism is 'all too often a mere cloak for self-interest or arbitrary rule'.[12] He uses examples of powerful people in the past such as presidents of countries and their deeds in order to illustrate how cultural relativism can actually be used as a justification for bad purposes.[13] A further argument is that cultural relativists consider culture as something unchangeable and

static. According to Tracy Higgins, ' cultural relativist arguments oversimplify the complexity and fidelity of culture by treating culture as monolithic and moral norms within a particular culture as readily ascertainable'.[14]Instead, culture should be seen as dynamic and constantly evolving. One of the biggest groups of people all over the world, who are opposed to the idea of cultural relativism are the feminists. They argue that culture is quite often unfairly used as a justification for denying women a range of basic human rights. The best example of such a case is the situation in the Muslim countries where verse 4: 34 of the Qur'an says that men are entitled to exercise authority over women and not the reverse. Using this statute as a justification, men in these countries treat women unequally and this is certainly a violation of the international human rights standards enshrined in the Universal Declaration of Human Rights 1948 Art 2 which states,

' Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'[15]

Furthermore, the unequal treatment of women is also a breach of the International Covenant on Civil and Political Rights 1966 Art 3[16]and the International Covenant on Economic, Social and Cultural Rights 1966 Art 3[17]both of which aim to ensure that women are treated equally in the enjoyment of the rights enshrined in them. Feminists also condemn the female genital mutilation, also known as female circumcision or female genital cutting. It is a common practice for the African countries but also for some parts of the Middle East, Europe and North-America. People who

practice female genital mutilation consider it as inalienable part of their culture. They think that it actually has a beneficial effect on the woman and they justify its use by saying that it is in accord with their culture. However, it is obviously in breach of international human rights standards and organizations such as UNICEF and UNFPA strongly condemn it as being medically unproven and discriminatory.

Arguments in favour of relative universality

Even though there are many arguments supporting cultural relativism it is not effective enough because of its many disadvantages I have listed above. Neither is universalism due to the fact that there are many states with different cultures and local practices for who it will be extremely hard and quite improbable to embrace the international human rights movement in case the rights proposed by it have a universal dimension. There is a more flexible and developed approach to human rights called relative universality. It is a mixture between universalism and relativism that 'views human rights as prima facie universal, but recognizes culture as a limited source of exceptions and principles of interpretation.' [18] The principle of relative universality of human rights which can also be defined as "weak cultural relativism" has been developed by Jack Donnelly. He argues that there are 'three hierarchical levels of variation which can be distinguished, involving cultural relativity in the substance of lists of human rights, in the interpretation of individual rights, and in the form in which particular rights are implemented.' [19] This means that the more particular and narrow a certain human right is the more it allows for different interpretations based on states' cultural practices and beliefs. Relative universality means a weak

cultural relativism which differs from the normal and most common concept of cultural relativism by the fact that it only allows limited rather than unlimited deviations from international human rights standards.[20]His idea of the relative universality of human rights Donnelly supports through his observations on 4 different factors – functional universality, international legal universality, overlapping consensus universality and ontological universality.[21]Let's define all these terms. Firstly, functional universality lies on the fact that the function of human rights is the same all over the world, namely, to provide people with attractive remedies for some of the most pressing systemic threats to human dignity.[22]Secondly, international legal universality is based on the idea that almost every state in the world has accepted the authority of the international human rights which roughly means the rights enshrined in the UDHR 1948 and the consequent six core international human rights treaties (on civil and political rights, economic, social, and cultural rights, racial discrimination, women, torture, and children).[23]Thirdly, the overlapping consensus universality is explained through the idea that throughout the past couple of decades more and more adherents of different doctrines all over the world start to endorse the human rights movement voluntarily.[24]Last but not least, Donnelly discusses the ontological universality and comes to the conclusion that from an ontological point of view people cannot have fully universal human rights since all prominent comprehensive doctrines ignore or actively denied human rights for large parts of their history.[25]By defending functional, legal international and overlapping consensus universality and insisting that the anthropological universality of human rights is indefensible, Donnelly comes to the conclusion that it is inappropriate to talk neither for the cultural

relativism of human rights nor for their universality but rather for their relative universality. He develops the most comprehensive and flexible approach towards human rights which not only assumes that there are certain inalienable human rights such as the right to freedom from torture, the right to a fair trial, etc. , but also takes into consideration local cultural practices and beliefs in the implementation of international human rights standards. Relative universality of human rights allows the state to preserve at a certain extent its autonomy and sovereignty and also the self-determination of its citizens. This is illustrated by the two examples given by Donnelly. The first one is the example of the law of apostasy. The UDHR 1948 Art 18 declares that everyone has the right to freedom of thought, conscience and religion. However, in the Muslim countries it is forbidden to change your religion. Donnelly argues that in this case, it should be permissible for Muslim countries, for example, to treat people who change their religion in a different way such as to deny them certain benefits as long as those are not guaranteed by the human rights.[26]In this case religion is so important for Muslim countries that not allowing them to ‘punish’ people who change their religious views would be a strong intolerance towards them. The second example is use of ‘hate speech’ in the USA. Its use is in breach of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 Article 4[27]and of the ICCPR 1968 Article 20(2). Nevertheless, the ‘hate speech’ is permitted in the USA since people there consider the right of freedom of speech as being of a bigger importance than the right not to be a subject of a discriminatory and racial treatment. These two examples show that there are cases in which we should allow countries to interpret human rights in a way they find appropriate as long as it is not

drastically in breach of the international human rights standards. There are people who disagree with the theory developed by Donnelly like Michael Goodhart. Even though Goodhart agrees with the substance of Donnelly's argument, he argues that rather than the conceptual, functional and legal international universality of human rights we should pay attention to their inclusiveness, generality and variability, and the extent of concurrence on human rights concepts. Furthermore, he finds that instead of anthropological universality we should explore their metaphysical status. He thinks that it is not appropriate to define the international human rights standards as relatively universal and argues that the use of the term relative universality more confuses rather than brings clarity in our understanding of them.

[28]Furthermore, he believes that rejecting the universality of human rights will boost their legitimacy since, as he says, it is not the universality of human rights which makes them legitimate but rather their global appeal, 'their promise of ending domination and oppression'. [29]Even though Goodhart agrees with the substance of Donnelly's argument, he argues that rather than the conceptual, functional and legal international universality of human rights we should pay attention to their inclusiveness, generality and variability, and the extent of concurrence on human rights concepts.

Furthermore, he finds that instead of anthropological universality we should explore their metaphysical status. [30]However, in his subsequent article, in response to Goodhart, Donnelly defends his arguments quite well. He says that the abolition of the ordinary language of interpretation of human rights including the terms "relativism" and "universalism" and the adoption of new terms on their place are quite unlikely to happen since it will take too much time for the new terms to penetrate. [31]Despite the critique from

Goodhart, Donnelly's approach to human rights standards is the most convincing one developed so far. Globally, we have seen many cases such as Sahin v. Turkey,[32]Goldman v Weinberger[33]and Multani v. Commission Scolaire Marguerite[34]in which people were denied rights which for them are intrinsic part of their culture. The international human rights movement should not rush the process of creating and implementing international human rights standards. These standards should rather be achieved with caution and patience. According to Gunning, it is essential for this process to include ' a dialogue with a tone that respects the cultural diversity' since only through a dialogue of that kind the world can reach a consensus on human rights standards which would take into account all the differences in their cultural practices and beliefs.[35]Ibrawoh adds to this idea by saying that, ' the promotion of national human rights standards against the background of the dominant cultural and social traditions in the state should be done with due respect to meritorious cultural values and traditions of local communities'.[36]

For example, if we want to incorporate international human rights standards into Muslim countries we should try to do it within the framework of Islam in order to succeed.[37]Hatch suggest that ' instead of leaving cultures as they are, as museum pieces, we should help to bring about change, or better, we should help the oppressed to bring about change'.[38]He argues that actually the more developed states are those who do not want the less developed to adopt and endorse the international human rights standards since they want to keep the status quo. This idea is supported by Higgins who suggests that actually the Western states and the liberal scholars and

not the oppressed are those who advance the point that there can be no fully universal concept of human rights since we need to take into account the difference between the various cultures of the states.[39]

Conclusion

Taking into account all the arguments listed above, we can conclude that Donnelly's relative universality theory of human rights is the most effective and comprehensive human rights approach so far. It promotes the idea that human rights should be neither fully universal nor fully relative but rather relatively universal and that states are allowed to occasional and strictly limited local variations and exceptions based on local cultural practices and beliefs in implementing international human rights standards.

Word Count: 2748