

Rights Debates: Universal vs. Cultural Relativism

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Abstract

This paper aims to examine common argumentative debates that have developed around the concept of rights. Investigating how the case for universal rights is made and how it is refuted by the theory of cultural relativism is the main goal of this article.

The study makes an effort to analyze the arguments put forth by various scholars and present them in relation to one another while outlining their respective claims. The paper is divided into numerous sections for this purpose. Part I, which is followed by the conceptual background, concentrates on the assertion that rights are universal since they stand for universal truth, and Part II makes the case for their presence everywhere. The 'universal' component of rights is criticized in Part III, which insists on cultural relativism, and its importance is emphasized. The discussion of the debate's balance factors takes up Part IV, which is then followed by concluding remarks.

Keywords: Key Words: Rights, Universal, Cultural relativism, Utilitarians, Human Rights,

Background:

Rights that were considered to be a state's internal matter have gained worldwide attention ever since the United Nations (hereafter UN) was established and globalisation made strides in the post-Cold War period. In global academia, the combined influence of the UN and globalisation has been explored in many backgrounds and contexts, which has spurred further debates concerning the universality of rights and the applicability of cultural relativism to the same.

Such a paradigm shift stipulates justification for each that has added new debates in the discourse of rightsⁱ. Freeman explains the underlying conflict between moral relativism and moral universalism as being the argument between individualism and communitarianism while drawing attention to the atypical debatesⁱⁱ. Universalism gives an individual a center position, whereas cultural relativism often accords a moral standing to a group of people, such as "culture" or "community" (Freeman, 1994 and 2012). This article makes the case that it is essential to discuss rights debates within the contexts of universalism and cultural relativism because only a thorough understanding of the concept of rights can effectively entitle individuals and communities and also give their entitlement a reasonable scope.

For a concrete understanding of the debate between universality and cultural relativism, this paper is divided into different sections, based on the different arguments. The argument presented in the first section supports the idea that rights are universal truths that cannot be subject to multiple interpretations (Rotry 1989; Donnelly 1985; and 1990; each with a different argument). The second portion presents an argument that highlights many perspectives on a single reality and asserts that because rights exist in all systems, albeit with

obvious disagreements, they are universal. The argument that took a strong stance in favour of cultural relativism and insisted that there is no consensus on the Manifesto of Rights is discussed in the next section (James Nickel, 1987). It explains that different cultures have different perspectives on rights, which means that no two civilizations can have the same idea of what is right (Nickel, 1987). Importantly, the concluding statement embeds the two arguments. It is to be noted that the core purpose of this paper is to examine the main ideas of the rights debates rather than trace their historical development.

I. Rights are universal as they are representing universal truth

Natural rights are an attribute of universality. An argument that rights are universal best summarises the claim that everyone has rights. Natural rights must be a part of all human associations, according to Grace A. de Laguna. The proposals advanced by scholars of this belief indicate that all people, regardless of their social connections or geographic location, naturally possess rights at all times and in all locations. It is crucial to recognise that natural rights philosophers hold comparable views that are frequently congruent with the virtue of universality and that they do so across a variety of reasons. As an illustration, Hobbes's "every man to everything" natural right can be described as a universal, basic, and human nature-based right. In the same vein, Hart maintained that if there are any universal human rights, they are subordinate to one fundamental human right—the "equal right of all men to be free"—which is independent of all other moral rights (Hart, 1970). Similarly, Locke's right is a universal position, just like Hobbes and Hart's. He described a right as a universal entitlement, the possession of which is based on an individual's rationality, the most important requirement for making a claim to a rightⁱⁱⁱ.

The utilitarian movement based its assessment of rationality on its potential benefits. Welfarists in general and utilitarians in particular agree wholeheartedly with Nozick's emphasis that "rights do not determine a social ordering" (Sen A.1982: Rights and Agency, in Philosophy and Public Affairs). With the conviction that utility matrices operate on a global scale, utilitarians have debated the validity of rights as universal claims. Rights are being claimed and granted since they have resulted in the greatest amount of happiness for the majority of people, which is true everywhere. The argument continues by saying that a person's behaviour would be appropriate if it serves his or her own interests and improves "the total sum of his pleasures," about which a person is a better judge and whose characteristic is universal (Bentham J., 1970). Bentham, like Burke, opposed any universal principles that might be applied à priori to a specific society (Belden, 2009). His definition of happiness is based on cultural norms that are undoubtedly different from those that exist globally. According to Sedgwick's universality principle, whatever is good for me is also right for everyone else in similar situations. He determines if equals are added to equals, the whole to be equal (Mackie, 1984, 382-383). According to Richard Hare (Hare, 1982), equality of happiness refers to the maximum balance of various satisfactions over frustrations, which is preferred in all circumstances and applied to everyone.

Alike natural rights, and utilitarianism, rights in Human rights discourses are described as the "world's first universal ideology" (Wissbridt, 1988). Human rights are universal by nature,

and it is unquestionably free to exercise or assert those rights, according to the 1993 Vienna Conference on the subject^{iv}. It is determined that rights exist in every society even when the notion of a right is not "clear or explicit recognition and elucidation" (Gewirth, 1984). Human rights are described by Cranston (1973) as an inalienable moral right due to every human being simply because they are human. Cranston (1973), Bunchanan, James W. Nickel (2007), Henry Shue (1980), Amartya Sen (1999), and Martha Nussbaum (2003) present human rights as a universal moral right that every human being, everywhere, at all times, ought to have. They are rights that no one may be deprived of without a grave affront to justice, and they are due to every human being simply because they are human. In "The Laws of People," Rawls believes that human rights are legitimate demands and ought to be binding on all nations, even those that don't seem to agree with them (1999: 80–81).

II. Rights are universal because they exist in all societies

Among many others, Beitz's interpretation of human rights has an intriguing idea in terms of human rights tradition. Beitz suggested a model of rights rather than a list of rights, one that establishes that human rights are pressing interests of people that are safeguarded from the threat of the world. According to him, the state bears the primary duty of ensuring that rights are upheld on a global scale (Beitz, 1979, 2001, 2009). His remarks about the state and the interstate obligations to interpret rights in the context of culture are fascinating. As a result, rights, which are thought to be a matter of political agreements, were made the focus of cultural relativism. The "decentering" of philosophical anthropology is well recognised^v. In this instance, Freeman contends that the theory of human rights is based on a particular definition of "human being" that varies depending on the society. Their parallels could be slight or non-existent (Freeman, *The Philosophical Foundations of Human Rights*, 1994). Thus, as Husak (1984) shows, human rights are almost universal but not quite.

Marx disproves the notion that human rights apply to all people. He draws the conclusion that the universality of human rights conceals a specific class interest. He said that the "rights of man" are nothing more than an ideological mask for the rights of individualistic, self-interested monads in one of his last remarks (Belden, 2009).

The idea of universal rights, which asserts that rights are universal because they exist in all communities, has been revised in light of such perceptions. The examination of cross-cultural communication by Adamantia and Schwab emphasises the non-Western understanding of human rights. They have historically demonstrated that although having diverse values and conceptions (Sinha 1978 and Zvobga 1979), human rights were an essential component of African (Dunstan M. Wai 1994) and Asian communities (Coomaraswamy, 1980; Ibrahim, 1994). According to Alison and An-Na'im (1992), there is no inherent conflict between cultural understandings of rights. However, they demonstrate the similarities in cultural conceptions that Dundes (1990) has noted. As Taylor argues, rights can be seen and debated as an alternative kind of modernity. Alison Renteln has written on rights as universals that transcend cultural boundaries (Renteln A., 1990). According to Taylor (Taylor, 1999), all cultures are capable of defending the essential normative principles of human rights and

securing them in a way that is both institutionally and philosophically or culturally coherent with their own customs.

The thesis of Rawls (1993) places a strong emphasis on the presence of similarities. He notes in "Political Liberalism" that, despite profound variations in religious beliefs and moral convictions, it is typically accepted that the presence of rights is necessary to preserve social order. According to Risse (2013), the concept and practice of rights are present in every community that accepts everyone. Similar remarks are made by Mark, who believes that the fundamental rights upheld by the human rights movement are universal and transcend geographical or cultural barriers (Kielsgard, 2011).

III. Right is what Culture Says: Cultural Relativism

Indeed, universal phenomena have overestimated similarity, ignoring the Third World's perception of rights as understood within a specific historical and cultural context. According to Lee (Lee, 1985:131), different civilizations or societies have distinct perceptions of what constitutes human well-being^{vi}. As a result, they have different attitudes towards issues relating to human rights. Because of this, it's possible that the universalization of rights will fail in many contexts, maybe as a result of the social and cultural diversity that Admantia Pollis and Peter Schwab (1982) suggest. According to American Anthropological Association (1947: 543), cultural societies have a significant influence. "Man is free only when he lives as his society defines freedom," it has been said.

As Rhoda Howard-Hassmann (Howard, 1993) notes, this emphasises that "cultural absolutism" in rights problems is an actuality that is not an abstract but rather a final resort. This suggests that whatever society declares to be "right" actually is right. It is important to consider cultural rights as rights because, as Rorty (1993) and Alston (1990) contend, they lay the groundwork for their actualization. Sen, who holds similar views, emphasises that a right can only be considered right if it has social value and the quality of being socially influential (Sen A., 2004). The needed common characteristics of social influenceability are challenging to be achieved because Western and Asian ideas of rights differ significantly (Bauer & Bell, 1999; Davis, 1995; Lee Kuan Yew and Dr. Mohamad Mahatir 1996). As per this argument, without cultural backing, overvaluing the universality of rights causes internal unrest in Third World nations, which ultimately permits international intervention that is criticised as being contrary to the concept of sovereignty. It was "implemented by intervention," according to Nickel (2007), and Gil Gott (2002). According to Andrew Nathan, it is "tempered universalism".

To add to the discourse, Nafisi offers cultural studies of rights in an effort to establish them as having universal values. He contends that criticism of practices that are otherwise different in culture will be deterred by objective debates of rights in a cultural context (Nafisi, 1993). Realising that human rights are universal principles that must be recognised and taken into consideration across cultures is important (An-Na'im, 1992). On some fundamental rights ideas, there is strong agreement and disagreement; Gutmann refers to this as "pluralism of foundations". It is quiet, however, on the issue of what would happen if oppressive regimes, which are sovereign in all other respects, made false claims about representing the desire of

the populace while disregarding human rights as Donnelly doubts (2007). Donnelly, while being sceptical fundamentally questions the UN statements that contain all rights as universal rights even when they are essentially a product of a social structure (Brandt, 1983).

IV. Rights held universally by all human beings by all cultures: “Balancing” universalism and cultural relativism

According to comparative research on human rights (Pollis, 1982: 15, Mutua 1995: 358, Pemma & Campbell 1998: 21), human rights are universally recognised in all civilizations. In the discussion, Donnelly provides a critical discourse on the universality and cultural relativism of rights (in his final texts). He claims that the state and bureaucracy embrace the universality of human rights as having values that cut across cultures^{vii}. According to Cohen (2006) and Risse (2013), human rights are "universal" rights since they are upheld "universally" by all people. This suggests that, in accordance with the universality principle, a person may assert a right even in the absence of claimable institutions (James, Rights as Enforceable Claims, 2003). This assumes that rights and the power to assert them are political morality's needs, whose representation in legislation is not necessary. Rights, thus, are specific, equal, and inalienable necessities that are urgent in all meanings (Donnelly, 2007). According to Baxi (2006), rights are universal in the sense that they serve as a representation of the universality of collective human ambitions. This emphasises the need to make the authority more ethical and accountable within the governance process. He argues that the Hegelian dialectical process, specifically the synthesis of abstract universality and abstract particularity in achieving concrete universality, is a superior way to understand the universality of human rights.

Significantly, in the contentious discussions of the West vs. the rest, argued as universalism and cultural relativism as well, Beitz's notion is unique and uncommon. He emphasises that the concept of universalism does not imply that all political and ethical opinions are necessarily shared by or approved by everyone (Beitz, 1979). According to him, they are intended to be universal in the sense that they apply to or may be invoked by everyone. He referred to it as the cultural deference principle. He adds that the concept of human rights is unquestionably culturally distinctive because it coexists with the virtue of universality and leads to overlapping consensus (Beitz, 2001: 274)^{viii}. His very this argument creates "relative universality" which indeed is a potent tool for creating a more equitable local, national, and global society.

Conclusive remarks

The arguments made in this paper suggest that any purported theoretical basis for human rights would be perspective-relative and thus not "foundational" in the necessary sense, as Rorty contends. He holds that no basis can be "objectively" or "absolutely" true. There is no super-perspective that supports one perspective above another because the "truth" of right is predicated on perspectives (Rorty, 1989). Therefore, to assert that rights are natural, universal, personal, or culturally specific is to contend that they are not only derived from the law or social custom but also serve as independent standards for evaluating both, as

Macintyre suggests (MacIntyre, 1981). Therefore, determining what is morally appropriate is more important than determining who is having rights. The debating discourse thus has to be observed, understood, and argued in the subjective sense. However, while respecting subjectivity it is essential to remember that absolute universalism may jeopardise cultural beliefs and traditions and that the dominance of certain cultural aspects may put suppressed communities at the mercy of cultures that are otherwise strong on a social, economic, or political level.

References and Bibliography

- An-Na'im, A. (1992). Introduction. In A. An-Na'im, *Human Rights in Cross-Culture Perspectives: A Quest for Consensus*. Philadelphia: University of Pennsylvania.
- Antieau, J. C. (1960). Natural Rights and Founding Father- The Virginians. *Washington and Lee Law Review*, 43-79.
- Barry, B. (2002). *Culture and Equality*. Cambridge: Harvard.
- Bauer, J., & Bell, D. A. (1999). *The East Asian Challenge for Human Rights*. Cambridge: Cambridge university press.
- Baxi, U. (2006). *Future of Human Rights*. Delhi: Sage.
- Beitz, C. R. (1979). Human Rights and Social Justice. In P. G. Brown, & D. Maclean, *Human Rights and U.S. Foreign Policy* (pp. 45-63). Lexington: Lexington books.
- Beitz, C. R. (2001). Human Rights as a Common Concern. *The American Political Science Review*, 269-282.
- Belden, A. (2009). Human Rights Theory: criteria, Boundaries and Complexities. *International Review of Qualitative Research*, 407-418.
- Brown, S. M. (1955). Inalienable Rights. *The Philosophical Review*, 192-211.
- Chevallier, P. (2013). Michel Foucault and question of Right. In B. Golder, *Re-Reading Foucault on Law, power and Right* (pp. 171-187). New York : Routledge.
- Cohen, G. A. (1978). *Karl Marx's theory of History*. Oxford: Clarendon press.
- Cranston, M. (1973). *What are Human Rights?* London: Bodley Head.
- Cranston, M. (1989). Human Rights are real and supposed. In M. E. Winston, *The Philosophy of Human Rights* (pp. 121-128). Wadsworth: Belmont.
- Darby, D. (2004). Rights Externalism. *Philosophy and Phenomenological Research*, 620-634.
- Dembour, M. B. (2010). What Are Human Rights? Four schools of thought. *Human Rights Quarterly* Vol32 , 1-20.
- Donnelly, J. (2007). The Relative Universality of Human Rights. *Human Rights Quarterly*, Vol. 29, No. 2 , 281-306.
- Dworkin, R. (2000). *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge: Harvard University.
- Escobar, A. (2010). Latin America at a crossword. *Cultural Studies*, 1-65.
- Falk, R. (2004). Human Rights. *Foreign Policy*, 18-28.
- Frankena, W. K. (1955). Natural and Inalienable Rights. *Philosophical Review*, 212-232.
- Freeman, M. (1994). The Philosophical Foundations of Human Rights. *Human Rights Quarterly*, 491-514.

- Freeman, M. (2012). *Human Rights: An Interdisciplinary Approach*. Cambridge: polity .
- Gewirth, A. (1981). Are There Any Absolute Rights. *The Philosophical Quarterly* , 1-16.
- Gewirth, A. (1992). Human Dignity as the Basis of Rights. In M. J. Meyer, & W. A. Parent, *The Constitution of Rights* (pp. 10-28). Ithaca: Cornell University.
- Green, H. T. (1885). *Lectures on Political Obligations*. New York: Longmans.
- Gunnar, B. (2006). Immanuel Kant's Theory of Rights. *Ratio Juris. Vol. 19 No.4* , 371-401.
- Habermas, J. (2001). Remarks on Legitimation through Human Rights. In M. Pensky, *In The postnational Constellation: Political Essays* (pp. 113-129). Cambridge: MIT press.
- Hare, R. M. (1982). Utility and Rights: Comment on David Lyons's essay. In J. R. Pennock, & J. W. Chapman, *Ethic Economics and the Law* (p. 153). New York: New York University Press.
- Harel, A. (2015, 07 28). Theories of Rights. Vadodara, Gujarat, India.
- Hart, H. A. (1955). Are there any Natural Rights? *The Philosophical Review* , 175-191.
- Hart. (1979). Between Utility and Rights. In Ryan, *The Idea of Freedom*. oxford: Oxford University.
- Hinchman, P. L. (1984). The Origin of Human Rights: A Hegelian Perspective. *The Western Political Quarterly*, 7-13.
- Hoffman, D. N. (1987). What Makes a Right Fundamental. *The Review of Politics, Vol. 49*, 515-529.
- Ingram, J. D. (2008). What is a right to have a right? Three images of the politics of Human Rights. *American Political Science Review*, 401-416.
- James, S. (2003). Rights as Enforceable Claims. *Proceeding of the Aristotelian Society*, 133-147.
- Lee, M. (1985). North Korea & the Western Notion of Human Rights. In J. Hsiung, *Human rights in an East Asian Perspective* (pp. 129-140). New York: paragon.
- Lyons, D. (1969). Rights, Claimants and Beneficiaries. *American Philosophical Quarterly*, 173-185.
- Macdonald, M. (1963). Natural Rights. In P. Laslett, *Philosophy, Politics and Society* (pp. 35-55). Oxford: Basil Blackwell.
- Mackie, J. L. (1984). Rights, Utility and Universalization. In R. G. Frey, *Utility and Rights* (p. 86). Minneapolis: Minnesota Press.
- Mark, K., & Engels, F. (1976). Manifesto of the Communist part. In Marx, & Engels, *Collected Works Vol 6* (p. 504). London.
- Neill, O. O. (1996). *Towards Justice and Virtue*. Cambridge: Cambridge.
- Nelson, P., & Dorsey, E. (2007). New Rights advocacy in a global public domain. *European Journal of International Relations*, 187-216.
- Nickel, J. W. (2007). *Making Sense of Human Rights*. Oxford: Blackwell.
- Nordahl, R. (1991). A Marxian Approach to Human Rights. In A. A. Annaim, *Human Rights in Cross Culture perspectives: A quest for consensus* (pp. 160-175). Pennsylvania: University of Pennsylvania press.
- Nussbaum, M. (1998). *Cultivating Humanity: A Classical Defense of Reforming Liberal Education*. Cambridge: Harvard.
- Onora O'Neill. (1996). *Towards Justice and Virtue. A Constructive Account of Practical Reasoning*. Cambridge: Cambridge Press.
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- Panichas, G. (1988). Hobbes, prudence and Basic Rights. *Noûs*, Vol 22` , 555-571.
- Pogge, T. (2000). The International Significance of Human Rights. *The Journal of Ethics*, 45-69.
- Pollis, A. (1982). Liberal Societies and Third World Perspectives on Human Rights. In S. Petter, & P. Adamanitia, *Towards a Human Rights Framework* (pp. 10-25). Newyork: Parger.
- Raphael, D. D. (1967). Human Rights, Old, and New. In D. D. Raphael, *Political Theory and the Rights of Man* (pp. 60-73`). Bloomington : Indiana University.
- Rawls, J. (1993). The Laws of the People. *Critical inquiry*, 36-68.
- Rawls, J. (1999). *The Law of Peoples*. Cambridge: Harvard University Press.
- Redgewell, C. (1996). Life the universe and everything: A critique of anthropocentric rights. In A. Boyle, & M. Anderson, *Human Rights Approaches to Environmental Protection* (pp. 71-88). Oxford: Oxford University Press.
- Rehnquist, H. W. (2006). Contemporary Theories of Right. *Standford law Review*, 1997-2050.
- Renteln, A. (1990). *International Human Rights: Universal versus Relativism*. Newbury: Sage.
- Ronald, D. (1984). Rights as Trump. In J. Waldron, *Theories of Right*. Oxford: Oxford University.
- Rorty, R. (1989). *Contingency, Irony, and Solidarity*. Cambridge : Cambridge.
- Sandilands, C. (1995). From natural identity to radical democracy. *Environmental Ethics*, 75-91.
- Sausa Santons, B. d. (2002). *Towards a New Legal Common Sense: Law, Globalsization and Emancipation*. London: Butterworths LexisNexis.
- Sen, A. (1999). *Development as Freedom*. New York: Anchor Book.
- Sen, A. (2004). Elements of the Theory of Human Rights. *Philosophy and Public Affairs* , 315-361.
- Taylor, C. (1999). Conditions of an Unforced Consensus on Human Rights. In B. Joanne, & D. A. Bell, *The East Asian Challenges for Human Rights*. Cambridge: Cambridge university press.
- Tierney, B. (1959). *The Idea of Natural Rights*. Grand Rapides: Scholars press.
- Waldron, J. (1984). *Theories of Rights*. Oxford: Oxford university press.

ⁱ D. D. Raphael has argued expression of universality both in a stronger sense and a weaker sense. For him, in the stronger sense, it means a right of all men against all men. However, in the weaker sense it means simply a right of all men, but not necessarily against all men (Raphael, 1967).

ⁱⁱ I put these debates as unusual because understandings under them have divided east and west with ideological differences. Byboaventura de Sausa Santons underpins that the debates of west vs. rest starts with the conception of globalized western localism (Sausa Santons, 2002).

ⁱⁱⁱ For details see Locke: The Second Treatise of Government, Chap. II, par. 6, Hobbes: 1972 Leviathan Baltimore: Penguin, pt. I chap. 13 and 14 and Rousseau: The Social Contract 1947 New York: Heffner, Bk. I, chap. I).

^{iv} It has mainly argued for right against exploitations and violence.

^v A term used by Jürgen Habermas, "A Conversation About God and the World, Interview with Eduardo Mendieta," in *Religion and Rationality: Essays on Reason, God, and Modernity*, ed. Eduardo Mendieta (Cambridge, Mass.: MIT Press, 2002), 153.

^{vi} According to D.G. Ritchie (1894), rights are claims of an individual upon others recognized by society, irrespective of its recognition by the state (Ritchie, 1894 & Darby, 2004).

^{vii} Ellen Messer has called him anti cultural relativist, (for his arguments given in 1985 &1990). For details see; Pluralist Approaches to Human Rights Journal of Anthropological research Vol53, (1997), pages 293-317.

^{viii} The idea of an overlapping consensus is used by Rawls not in human right analysis, idea is used by Nussbaum (1997) and Passim.