HUMAN RIGHTS POSTSCRIPT

IS MODERN HUMAN RIGHTS REGIME APPROPRIATE IN LIGHT OF HUMAN DIVERSITY?

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I. INTRODUCTION

The international system of human rights is based on the ideal of universalism which holds that there is an underlying human unity that entitles all individuals, regardless of their religion, gender or any cultural or regional antecedents, to certain basic minimal rights, known as human rights. The theoretical support for universalism is grounded in three major jurisprudential theories—the natural law theory, the theory of rationalism, and the theory of positivism, although more recently, other theories such as, the human capabilities theory have also been proposed (Dworkin 1978, Nussbaum 1993, Sen 1993, Rawls 1971).

Natural law has its roots in the ancient Stoic philosophy and emphasizes ethical dimensions of the law. It asserts that individuals have certain inalienable rights of the highest order granted to all individuals by God or Providence and that human-made laws are just only insofar as they do not conflict with the eternal natural laws governing the universe (Weinreb 1987). Unfortunately, it is difficult to justify universal human rights based on the natural law theory in a world with a profound cultural and religious diversity, with little, if any, agreement among major cultures and religions about the very existence of a higher order law and its mandates, and in a world plagued by doubts about the existence of any universal moral or ethical norms.

Rationalism, a closely related concept, is a theory of universal laws based on a belief in the universal human capacity to reason and think rationally (Donnelly 1989). Rationalism replaces the divine origins of universal human rights found in the natural law theory with the idea that human rights are held by each human being, in an individual capacity, due to the universal capacity of all humans to think rationally. Both rationalism and natural law theory are often combined in the modern human rights discourse and take the form of claims that universal human rights exist independent of culture, ideology, or value systems. In this view, universal human rights are a class of rights each individual possesses by virtue of being a human, which are extra-cultural and meant to challenge and change the existing norms, practices, and institutions and to subvert oppressive customs (Donnelly 1989).

Positivism, on the other hand, justifies the existence of universal human rights by noting the world-wide acceptance and ratification of human rights instruments. According to positivists, universal human rights norms have been created by and are embodied in the international treaties and customary international law (Higgins 1994). Positivists observe that cultural differences notwithstanding, all Western and non-Western nations have signed and ratified the vast majority of human rights treaties and agreements, a fact which attests to the worldwide acceptance of the human rights principles set forth in these treaties and agreements. This uniform worldwide acceptance provides, therefore, a legitimate basis for adherence to such universal human rights and other standards underlying these treaties and agreements.

Positivists also observe that the source of human rights lies not in individual cultures but rather in international law which gave rise to the idea of universal rights. Consequently, positivists claims that human rights cannot be withdrawn by any domestic legal system and must take priority over the conflicting norms of different domestic systems. Although positivism provides a sound legal justification for universality of human rights, it does so primarily for individuals living in modern Nation States.

Unfortunately, positivism fails to justify universal rights for indigenous peoples, many of whom were forcefully annexed into modern States and many of whom deny that modern States have a moral or legal authority to represent them in the international arena.

The capabilities theory and related approaches look at the quality of life of various groups and individuals and ask whether individuals in a given culture live as decent a life as they are capable of living (Sen 1993). This evaluates various sub-groups within the society and compares them against each other in order to detect structural inequalities, and argue that all individuals must have at least some minimum rights necessary for human functioning (Nussbaum 1993, 1995). Although the capabilities theory represents a very thoughtful attempt at justifying universal human rights, its primary weakness lies in its failure to adequately account for the fact that certain significant differences among cul-
tures just cannot be reconciled by looking for commonalities or points of agreement among these cultures.

Until recently, the international community has uniformly subscribed to the view that human rights laws should be universal, but this view is under attack by various modern schools of thought, including cultural relativism, deconstructionism, interpretivism, Marxism and postmodernism, all of which dispute the validity of the universalism and argue that universalism is merely a reflection of Western culture and it therefore fails to represent the diversity of human experience. To human rights relativists, universal human rights norms are impossible to defend in such a richly diverse world and are no more than a “Western concept with limited applicability” (Pollis and Schwab 1979).

This article examines the applicability of cultural relativism to the international human rights regime, especially as it shapes international responses to gender-based abuses perpetrated against women and other disenfranchised individuals living in non-Western societies. The first part briefly outlines various criticisms of universalism. The second part focuses on major theoretical and practical weaknesses of using cultural relativist approaches in human rights law. It argues that the culture-relativist critique of the modern human rights law is largely invalid and has corrupting effects on the human rights regime, and it concludes that human rights universalism, despite all its flaws, is still the better approach.

II. CULTURAL RELATIVISM AND OTHER RELATIVISTS SCHOOLS

Cultural relativism is a theory which asserts that there is no absolute truth, be it ethical, moral, or cultural, and that there is no meaningful way to judge different cultures because all judgments are ethnocentric (Gellner 1985). The early form of cultural relativism was a reaction to the ethnocentric assumptions of nineteenth-century science, which glorified Western societies and diminished the achievements of non-Western cultures. Early descriptive relativists were skeptical of broad generalizations about human beings and challenged the notion of the natural superiority of Western civilization (Boas 1901; Benedict 1934; Mead 1928, 1963). Instead, they emphasized the seemingly endless human diversity.

In fact, they focused so much on exposing the seemingly vast cultural differences, they tended to disregard data showing a significant degree of patterned similarities among human cultures (Edgerton 1992). Normative relativists were convinced that in addition to being highly variable, cultures inculcated their members with moral and ethical rules through involuntary socialization and enculturation and that few, if any, individuals were consciously aware of the arbitrary character of beliefs that were ingrained into them (Herskovits 1958, 1973). Consequently, normative relativists felt that there could be no extra-cultural standards by which other cultures can be judged, thus forcing relativists to accept and tolerate all practices engaged by others.

In the 1970s the most radical version of cultural relativism, known as epistemological relativism, emerged (Geertz 1984). Epistemological relativism argued that not only do there exist no extra-cultural standards against which cultural practices may be judged as acceptable or unacceptable because all cultures are mutually incomprehensible— as Rosaldo put it, “my own group aside, everything human is alien to me.” (1984:188) they also argued that there is no such thing as objective reality, truth, or reason. According to epistemological relativists, all knowledge and morality are exclusively culture bound, and rational thinking and the scientific method are no more than a culturally bound form of Western ethnoscience. In that view, science is not a logically coherent system of verification and falsification, but rather a culturally-biased way of thinking that is no different from magic or witchcraft.

The rise of epistemological relativism coincided with the emergence of many new schools of thought that rose to prominence at that time such as deconstructionism, postmodernism, and Marxism, all of which have attacked the very idea of scientific, rational, or ethical reasoning. Marxism, for example, emphasizes the inevitability of class-consciousness in shaping individuals’ viewpoints (Kolakowski 1978). Deconstructionism and postmodernism profess that there is no way of knowing anything beyond one’s direct experience and reject the very concept of reality (Jameson 1991). All these schools repudiate the concept of objectivity and consequently the universality of basic human rights. To many social scientists steeped in those theories, any attempt to define even the most basic scheme of universal human rights is meaningless ab initio.

Obviously not all modern scholars accept cultural relativism and the anti-explanatory and anti-scientific particularism of its variants. Feminist scholars are also deeply troubled by the fact that relativism, postmodernism, or deconstructionism marginalize gender-based violence and avoid the reality of systemic power imbalances between the sexes (Gordon 1993; Moore 1988). Moreover, they are concerned that large numbers of non-dominant groups and individuals from various societies are routinely disregarded and excluded from cultural relativists’ analysis as if they merited no attention (Zechenter 1997).

Others, like Gellner (1985), question the cultural relativist assertion about the inherent incomparability of different cultures by observing that although numerous social scientists have conducted fieldwork in seemingly alien cultures, and numerous individuals have traveled and lived in alien cultures, no one has ever encountered a culture that was so vastly different as to be wholly incomprehensible or un-interpretable to outsiders. Similarly, no language has ever been found that was not capable of being understood, translated, and acquired by outsiders. In fact, modern research indicates that language acquisition is largely genetically controlled (Pinker 1994).

Moreover, the fact that numerous individuals have been able successfully to switch cultures, migrate into other cultures, or adopt or modify their own customs
and beliefs, belies the idea that humans are so exclusively shaped by their native culture as to be incapable of comprehending or adopting other cultures or that cultures vary so significantly as to be entirely unintelligible to outsiders. Gellner’s insights have been strengthened by modern research in evolutionary psychology, sociobiology, primatology, psychiatry, modern cognitive sciences and neurosciences, which shows rather convincingly that there is such a thing as universal human nature, lending credence to the universalist belief that there is an underlying human unity which allows us to devise minimum universal standards applicable to all human beings regardless of their culture (Barkow, Cosmides and Tooby 1992).

III. WHAT IS WRONG WITH RELATIVISM IN THE AREA OF HUMAN RIGHTS?

A. Contradictions of Cultural Relativism

Simple scrutiny reveals that most applications of cultural relativism to human rights are self-contradictory. On the one hand, relativists subscribe to the proposition that there are no universal laws or principles, yet on the other hand they also insist that one must be tolerant of the cultural practices of others, thus making tolerance a de facto universal principle. If it is true that there are no universal rules, be it ethical or moral, then cultural relativists commit an error by demanding that, as a matter of principle, no cultural practice should ever be judged by other cultures or by outsiders.

So long as we recognize at least one universal principle, we should carefully consider which principles deserve to be applied universally and which do not. A good case can be made that other values, such as justice and fundamental fairness, are far more worthy of being promoted as universal rather than the principle of tolerance, where tolerance is defined not as avoidance of hasty judgments, but rather as an avoidance of any extra-cultural judgment irrespective of circumstances.

B. Static Conception of Culture

Cultural relativism is based on a static conception of culture. By emphasizing stability and cultural continuity of customs or traditions, relativism disregards or minimizes the importance of social change. In fact, it ignores the inevitability of change in every society and dismisses the thorny fact that some traditions persist while others are selectively discontinued. Culture is an ongoing adaptation to a changing environment. In a changing environment, cultural practices routinely outlive their usefulness and cultural values change either through internal dialogue within the cultural group or through cross-cultural influences. Any contact between cultures is likely to cause at least some modification in the customs of the contacting cultures or at least induce a reinterpretation of these customs. It is this constant reinterpretation, reinvention, and modification of customs that allows cultures to survive and be viable over time.

Culture can also be viewed as an uneasy compro-
judge foreign cultures, lest they stand accused of ethnocentrism and lack of sensibility to others.

Considering the enormous difficulty involved in making any judgments, especially wise and balanced judgments, it is easy to understand the reluctance to engage in making them. Although no one can deny that even the best judgments and sound reasoning can be and have been used in an ethnocentric manner, making judgments is not synonymous with ethnocentrism per se. Cultural relativists are correct in pointing out that by endorsing or rejecting a foreign custom, one risks an imposition of one's own cultural prejudices on others. They are also correct in emphasizing that upbringing and education bring with them inherent biases. But the belief that judgments of other cultures must be avoided altogether, because they may be ethnocentric, is illusory. One simply cannot avoid making judgments when faced with oppression and brutality masquerading under the guise of cultural tradition. Such a non-judgmental tolerance of brutality is actually an ultimate form of ethnocentrism, if not an outright ethical surrender. Cultural relativism, despite its pretenses to the contrary, involves making judgments and, in the process, ends up condoning abuses perpetrated against the voiceless and the disenfranchised.

E. Emphasis on the Group at the Expense of the Individual and the Misunderstanding of Self-Determination

Unlike many relativists who emphasize the importance of groups, most universalists take the position that the locus of human rights is most properly situated in an individual. Universalists recognize an individual as the unit of cultural evolution and selection. They also recognize that rights of groups are best protected by attending first to individual rights. For example, the best way to protect the rights of any cultural group to practice their customs and religion is to guarantee freedom of religion and expression to all their members. That way, anybody wishing to practice may do so, while those wishing to abstain, for whatever reason, have their rights protected as well. In contrast, if one were to grant such a right to the group, the individuals who disagree with the views of the majority would have no recourse. History has shown over and over that groups and cultures show a proclivity toward the exploitation of individuals or entire classes of individuals, such as women or children, and that without the proper legal constraints, groups will disabuse their powers in a manner that guts the very idea of human rights.

In contrast, proponents of cultural relativism adopt a group-centered view of the world and disregard the fact that many societies place several restrictions on many of their members and especially their women. Many proposals calling for the establishment of group rights are based on research that does not adequately reflect such intra-cultural diversity. What may be advantageous for the group, or for religious or political elites within that group, may or may not be in the interests of individuals belonging to that group or even in the interests of the entire group. Far too many ethnographies provide little or no information about intra-cultural diversity, and treat women and other disadvantaged groups as essentially marginal and irrelevant by failing to reflect their opinions, beliefs, and the degree of their acquiescence to the dominant cultural practices.

F. The Abdication of Ethical Responsibility; Self-Serving Uses of Cultural Relativism; Unsustainability

The self-imposed straightjacket of absolute respect for all forms of cultural behavior precludes relativists from making cross-cultural judgments and from engaging in meaningful comparisons. Many governments, especially those of the Third World countries, have realized the political usefulness of relativism and erected upon it the position that a government is free to suppress and suspend the human rights of its citizens in the name of cultural sovereignty.

In recent years, several Third World countries have challenged the very principle of the universality of international law (Cook 1990, Hannum 1990). The problem with their challenge is that they are mostly, if not exclusively, self-serving. Those who defend culturally sanctioned violence against women do so, not in order to uphold abstract ancient cultural principles, but typically to advance their own self-interest, be that economic, social, or political. Their claims that universal human rights are nothing more than a Western importation designed to perpetuate Western imperialism and to impair the economic and cultural development of Third World cultures are thinly veiled attempts to strengthen their own power base. Religious fundamentalists routinely denounce the excessive individualism of universal human rights and object to the imposition of Western values, which they claim are embedded in universal human rights law.

History has shown that it is unwise to accept at face value any official claims that systematic discrimination or presence of cruel customs is part of the cultural heritage of a society. The only meaningful defense of abusive customs that would be consistent with the principles of human dignity and autonomy would be a bona fide showing that each subjugated and abused individual consented to such a practice, and that such consent was knowing and informed. In practice, most individuals living in traditional and indigenous societies have few, if any, economic or other options and are incapable of giving an informed consent to harmful or brutalizing customs.

The growing conflicts between rights of individuals and group-sanctioned violence are only likely to intensify in the near future. In particular, the impact of culture and tradition on the treatment of women must be carefully evaluated by analyzing who benefits from the tradition, versus who bears the cost of the tradition, and by looking at class and power distribution in the society, as well as the politics of the so-called traditions. International human rights norms offer a useful framework for resolving conflicts between women's rights and traditional customs that harm and dehumanize women. Universal human rights standards act as limits on the
excesses of culture-and religion-based violence. They ensure that culture is not used as an excuse to limit and impair women's de jure and de facto rights. Ultimately, the rights of individuals and groups must be balanced by evaluating the nature and significance of cultural practices; their effects on the weakest members of the society; the degree to which the conflicting rights interfere with each other; the cumulative effects of potential restrictions on either's rights; and the proportionality of the restriction (Sullivan 1992). The extent to which women will be able to exercise their rights within various cultures and succeed in minimizing violence and gender-based inequalities will be ultimately linked to these women's abilities to share in the interpretation of their cultural traditions.

The assertion, often made by relativists, that indigenous women are indifferent to, or offended by, Western notions of human rights is factually erroneous. The criticism of feminism as nothing more than a Western imperialist ideology fails to explain the ever-growing women's movements across the globe (Kerr 1993; Peters and Wolper 1995). For example, African women have organized educational campaigns to combat the brutal sexual surgery of clitoridectomy. Many Muslim feminists are fighting against conservative Muslim clerics by recognizing that religious fundamentalism is nothing more than "patriarchal attitudes and cultural traditions disguised as religious norms" (Mernissi 1991:ix). Peasant women in India have organized themselves to prevent dowry-related burning of young women (Jayawardena 1986). The Fourth World Conference of Women, which took place in September of 1995 in Beijing was attended by large numbers of women from traditional societies. All those developments belie the relativists' view that universal human rights are excessively Western and not desired by non-Western individuals. Many such non-Western individuals not only support and embrace the universal standards, they use them as a tool in the internal cultural dialogue that is ongoing in many societies today.

From a practical perspective, relativism is unsustainable in the modern world. Even the most remote indigenous groups have been substantially integrated into the global economy and are subject to ever growing external influences. It is precisely these peoples who desperately need the protection of their human rights, and ironically, it is often the dictators, the fundamentalists, and the multi-national companies who chant the mantra of cultural relativism for their own benefit. By refusing to engage in the evaluation of other cultures and their practices, cultural relativists are unable to analyze the true nature of such politically motivated claims and are unwittingly lending a helping hand to those who benefit from resurrecting, appropriating, or inventing whatever customs they seem fit.

IV. CONCLUSION

Cultural relativism, in its various forms, has entered the debate about human rights and has been steadily gaining popularity among many groups and individuals. Perhaps this is so because some scholars believe that cultural relativism is the only alternative to the dangers of ethnocentrism and moral absolutism (Hatch 1983; Jarvis 1983). Or maybe this is due to its intuitive appeal to many politicians and activists who use it to advance their own agenda. Or perhaps because of the political expediency that cultural relativism offers to governments and those in power, the ideas of cultural relativism continue to expand well beyond the academe. Whatever the reason, cultural relativism has the potential of undermining the modern human rights law developed during the last fifty years. In fact, some major international human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women are being rewritten and amended to accommodate various cultural and religious differences in the name of cultural relativism, gutting in the process the whole idea that women deserve basic human rights protections (Cook 1990).

Contrary to the assertions and fears of relativists, human rights universalism does not take away decision-making powers from individual cultures, nor does it have demoralizing and homogenizing effects. Nor is there any evidence to show that universalism is merely a form of uncritical ethnocentric Western conspiracy designed to undermine non-Western cultures. It may well be that universal human rights ideals were first recognized and developed in the West. But that does not mean such ideals are alien to non-Western cultures. Similarly, while the development of international human rights law during the last forty years was primarily spearheaded by Western nations, it does not mean that the resulting international human rights regime is ethnocentric and unjust.

The main objective of the existing universal human rights regime is not to impose a jacket of arbitrary and homogenizing uniformity among diverse cultural traditions. Instead, the goal of universalism is to create a floor below which no society can stoop in the treatment of its citizens. Conversely, universalism has never aspired to establish an upper ceiling of what the ideal or maximum level of human rights should be, leaving such improvements and enhancements to each individual culture in accordance with its resources and abilities. All major international instruments and treaties, such as the United Nations Charter, the Universal Declaration of Human Rights, together with its two binding Covenants, and all major international conventions such as the conventions against torture, slavery, and genocide, are attempts at universalizing only the minimum standards of treatment of all individuals.

Due to a minimalist approach to standard setting, modern international human rights law is fully compatible with cultural diversity and moral diversity found around the world. Under universalism, each State and culture retains sovereign power over its own cultural development albeit within the limits delineated by international law. Although the limitations imposed by international human law are minimal, they provide important protections for individuals who would otherwise be entirely at the mercy of the State or the group
in power. These protections include such basic rights as: the right to bodily integrity; the right to be free from torture and physical and psychological abuse; the right to be free from arbitrary courts, imprisonment and police coercion; the right to be free from slavery and genocide; the right to free speech; the right to choose to be associated with, or to be free of, any religion, culture, ethnicity, and language.

Although human rights universalism has its flaws, universalism often provides the only avenue available to individuals in their intra-cultural struggle for fairness, justice, and equality. Consequently, the abandonment of universalism in favor of cultural relativism would have profound implications for those brutalized in the name of culture or religion. Even the critics of human rights universalism admit that the international sanction provided by universalism is conducive to the preservation of internal dialogue within many totalitarian societies and thus provides the needed leverage to improve the human rights situation within those countries (An Na’im 1992).

The tension between the rights of groups to maintain their traditional culture and the rights of individuals to reject that culture, either in whole or in part, is only likely to increase in the future. We must strive therefore to develop criteria for balancing the needs of both by finding new ways in which universal ideals can be internalized and legitimized in various cultures. There are many as yet unanswered questions, such as how to determine which rights are more fundamental than others, which rights should be considered non-derogable and which rights can be recognized as more culturally dependent.

Is it possible to develop an international consensus as to the criteria which could be used to critically evaluate cultural customs and to judge them? How shall we engage in a comparison of cultures? How can we most effectively legitimize the claim that certain ethical and moral considerations are absolute in the sense that they should not be violated or deferred under any circumstances? The answers to such questions have yet to be completely articulated, but in order to achieve further progress in this area, it is necessary to abandon the uncritical pluralism postulated by cultural relativism. Indeed, anthropologists are in the unique position to promote the observance of human rights among the societies they work in by researching the congruence between local traditions and the universal norms. In all likelihood, the observance of human rights in all societies will be significantly improved if those rights are perceived as legitimate and fitting into the local tradition (An Na’im 1992).

There exist genuine differences among cultures and not all such differences can easily be reconciled. The universal human rights law represents an attempt to strike a proper balance between the rights of each individual culture to create its own moral and ethical norms and the needs of individuals to be protected against arbitrary and brutal customs and cultural practices. As such, human rights universalism is worthy of protection against the cultural relativistic assault. Despite all its flaws, human rights universalism still offers the best hope of dignified life to the world’s population.

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