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CENTER FOR INTERNATIONAL STRATEGIC ANALYSES

Human Rights in World Politics: The Fallacy of Enforcing Human Rights to Diverse Cultures

Evangelos Koulis

Research Paper No. 2



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1. INTRODUCTION

In 1999, the secretary-general of the U.N., Kofi Annan, felt emboldened enough to tell the General Assembly that their core challenge was to: “forge unity behind the principle that massive and systematic violations of human rights- wherever they may take place- should not be allowed to stand....If states bent on criminal behaviour know that frontiers are not the absolute defense; if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in expectation of sovereign immunity.”

(Press Release 1999)

Annan called for a redefinition of national interests that will “induce states to find far greater unity in the pursuit of such basic [U.N.] Charter values as democracy, pluralism, human rights, and the rule of law” (Press Release 1999). This statement highlighted the difficulty between universal human rights in theory, and how states, sovereignty and cultural differences create complexities in practice. Albeit the fact that almost two decades have passed, the interventions in Libya, Iraq and Afghanistan indicate how persistent and relevant these issues still remain.

This paper ‘delves’ into the contemporary issue of enforcing universal human rights regardless of the cultural differences and the symptoms of this practice. In doing so, it argues that because of the continued blurring of human rights and national interests by powerful states, only the ‘basic’ human rights should be ‘enforced’ on other cultures. While this question is situated around cultural diversities, the terms ‘universal human rights’ and ‘enforcement’ are of equal importance to reach this conclusion. In fact, the ‘Universality’ of human rights is still one of the main debates between cosmopolitans and cultural relativists. This debate draws upon the philosophical foundations of human rights, their applicability in a highly globalised world, and their relation with diverse cultures.

In particular, this essay is constructed around three parts. The first part will analyse the ‘Universality’ of human rights based on the two ‘conflicting’ theories stated above, to argue that not all human rights should be enforced on other cultures. Moving forward, the second part will illustrate the bilateral problematic nature of the term ‘enforcement’. Finally, this paper will take into consideration the cultural differences to demonstrate that (unlike extreme cases of human rights violations) the underlying reason behind their scepticism regarding human rights lies on the latter’s contentious practical implementation.

2. WHICH HUMAN RIGHTS?

The first thing to consider when engaging the question if universal human rights need to be enforced on different cultures, is to analyse the highly debatable term ‘universal’ in human rights. In doing so, it is argued that although a great number of rights can be seen as universal, others should be reconsidered especially in relation to their ‘enforcement’.

The main essence of human rights as depicted by the Universal Bill of Rights lies in human dignity and social justice for individuals (Donnelly 1982). The contemporary debate between those who are in favor of human rights’ ‘Universality’ (Universalists) and those who are against it (Cultural Relativists) is grounded on the complex cultural issues and their ‘conflictual’ relation with human rights. While the former argue that human rights are universal, the latter are against this notion and perceive universal

human rights as Western-based ideals, posing a threat to Non-western cultures (Franck 2001). As it will be demonstrated below, this paper 'chooses' a 'third path', which is called 'Relative Universality' (Donnelly 2007) according to human rights theorist, Jack Donnelly.

Human rights' 'Relative Universality' theory lays its grounds on the fact that while human rights consist of universal entitlements all human beings should enjoy, some of them are relative to cultures (Donnelly 2007). In other words, without 'invalidating' the significance human rights hold, cultures, whether they are based on moral traditions or religious interpretations of human well-being, need to be respected and tolerated. However as it will be argued, not every moral tradition, especially the extreme ones, that contravenes the human rights norms needs to be tolerated, but on the contrary they need to be exposed. Thus, the 'Relative Universality' of human rights reflects an attempt to formulate a 'consensus' between diverse cultures and human rights.

More precisely, a dichotomy needs to be made between the fundamental 'basic' human rights (Walzer 1987) and those that can be 'revisited' (Donnelly 1984 I bell) for a consensus to be established. While it is impossible for this paper to extensively analyse all the rights, the former rest roughly on the Articles that address the rights to life, liberty, and security of the person; the guarantee of legal personality; and the protection against slavery, arbitrary arrest, detention, exile, and inhuman or degrading treatment, which are inextricably connected to basic requirements of human dignity (Donnelly 1984). Furthermore, Articles like 1, 2 and 7 regarding equality of all human beings and non-discrimination, along with rights such as the right to health, food, medical care and the right to education. Most of these rights seem to rather converge with most traditions, cultures and their religions (Caney 2000).

Nevertheless, most cultural relativists, and even human rights theorists like Jack Donnelly, have strongly argued that some rights are at least 'problematic' to be seen as universal. Donnelly's notion of human rights' 'Relative Universality' has emphasized on Articles 16, 17, 18, 21, 22 and 27, to refer to some, of the Universal Declaration to illustrate these 'inconsistencies' between human rights and moral traditions (Donnelly 1984). For example Article 18 indicates: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (Universal Declaration 1948). Article 18 might seem compatible with most western societies but it is antithetical with most Islamic communities as they prohibit apostasy to Muslims. On the contrary, despite this restriction, most Muslim communities do respect other adherents of religions practicing their beliefs. Therefore, the fact that this tradition is deeply rooted in this religion and the tolerance of others' beliefs, implies that freedom of religion shouldn't necessary be neutral, it just requires for people to be able to decide what they to worship (Donnelly 2007). This example demonstrates the flexibility human rights might require to encompass other cultures.

Another indicative example is Article 16 which says: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution" (Universal Declaration 1948). All traditions accept the right to found a family, but 'full age' and 'dissolution' can be seen as problematic. Although dissolution of a marriage contradicts Muslim traditions, it would be difficult to argue in favour of it because it can be considered a 'violation' of other rights related to free will. On the

contrary, it can be argued that the full age issue is covered with abstraction because differences do not only occur between diverse cultures, but also within Western countries. For example, whereas the age of consent in Switzerland is set at 16, in Denmark it has been set at 15. Because of the fact that full age is socially constructed, it would be very difficult for a universal 'rule' to be applied, but more importantly, to be endorsed.

So far, this analysis has briefly attempted to demonstrate some of the problematic aspects that arise from the concept of "Universal human rights" (Donnelly 2003). In fact, the examples used portray this relativity of human rights and demand theorists to take a closer look. After all, human rights have been created to provide individuals and groups the pursuit of their own vision of a good life, as long as this does not contradict the rights of others (Donnelly 2007). As such, the term 'universal human rights' encounters many logical obstacles by other, not necessarily extreme and violent moral traditions. These imply that either human rights are not universal, since they don't meet 'all' people's beliefs or that they should be seen from a different perspective to be endorsed. Thus, if human rights are to be enforced on other cultures, some of them need to be revisited.

3. THE ENFORCEMENT OF HUMAN RIGHTS

The other debatable term is the 'enforcement' of human rights. This part is dichotomized into two sections. While the first section demonstrates the ineffectiveness of human rights' enforcement, the second section will question the legitimacy of those who enforce them as well as their underlying problematic motives.

3a. An Ineffective Strategy

While the first part drew upon Donnelly's relative universality of human rights to demonstrate the problems of absolute Universalism and Cultural Relativism, this section concentrates on the 'distortion' of these rights when they are enforced on diverse cultures. The conclusive thought of this ineffectiveness is the need of a limited sets of rights when it comes to enforcement, based on Michael Walzer's "minimal and universal moral code," (Walzer 1987), namely rights against murder, slavery, torture, and genocide (Bell 1996).

Human rights, as entitlements to individuals, are inextricably interrelated with western liberal ideals. Thus, human rights were not enforced by western societies throughout their history (Douzinas 2013), but they consist of by-products of a specific liberal society formulated in the 18th century (Beitz 1999). What this implies is that the 'non-endorsement' of human rights by non-western cultures should also be attributed to their societal 'underdevelopment'. According to Richard Rorty, the rejection of human rights by other cultures is not related to being wrong or irrational as there are no general moral standards, but they are constructed as such by societies. Therefore, for Rorty these cultures are 'deprived' of security and sympathy that enabled the West to create the rights and make sense (Rorty 1993).

The argument that is put forth is not identical to what the American Anthropological Association (AAA) argues: "standards and values are relative to the culture from which they derive so that any attempt to formulate postulates..." (Executive Board 1947). In other words, this 'deprivation' of other societies to endorse human rights, does not imply the inapplicability of human rights to other contexts, but on the contrary the ineffectiveness of enforcement practices. This can be accurately demonstrated from the Athenian slavery and its criticism. The fact that Athenians used slaves, cannot be

subjected to the modern ethical and moral values that prohibit slavery, because the concept of individual worth, personhood and autonomy did not exist back then. In a similar way, diverse societies have not reached the societal conditions to endorse human rights (Brown 1997).

A characteristic example of this is the enforcement of democracy in various part of the globe. The enforcement of democracy on places like Cambodia and Iraq cannot be met without criticism. Although for 'Us' democracy should prevail against authoritarian regimes, it is obvious from the allegations of corrupted elections in these places that democracy has been endorsed on the one hand, but distorted on the other. This 'distortion' and hijacking of rights is not invalidating the importance of humanitarian interventions related to the prevention of genocides or torture. It only means that the enforcement of human rights should not seek to impose rights that diverse cultures are not ready to endorse. Many theorists would argue that a distorted democratic regime is better than a dictatorship. However, western nations should tolerate a well-ordered but non-liberal regime (Rawls 1993). The recent interventions in Afghanistan, Iraq, Syria and Libya and the power vacuum they created seem to converge with the above notion.

This ineffective enforcement has two solutions: First, to avoid the distortion of human rights, meaning that the enforcement should be pursued only in extreme violations of basic human rights. Second, human rights will only avoid this distortion and achieve their ultimate goal by building on, rather than enforcing them. In other words, a long-term commitment to human rights by building procedures and institutional values will result in understanding the cultural dynamics of other societies (Young 1980). Thus, instead of enforcing all human rights indiscriminately and challenging local cultural traditions, they should be promoted.

3b. Who Guards the Guardians?

Another 'problem' that needs to be pinpointed when focusing on the enforcement of human rights, is the 'legitimacy' of the states and the constant 'blurring' of human rights with states' interests. This 'victimisation' of human rights by the geopolitical forces is the reason why many theorists or even members of the United Nations (UN) have argued there was no progress for years (Glennon, 2003).

The problem of 'legitimacy' resides in the fact that some permanent members of the UN's Security Council systematically violate human rights and the UN Charter. This contradiction is deeply rooted in the sovereignty of the states, which sees them violating human rights on the one hand, and enforcing them on the other (Mertus 2004). An ironic example of that are the violations of human rights in Guantanamo Prison by the United States (US). While the US tortures its prisoners in an attempt to find terrorists, at the same time it enforces the right to be free from torture in other countries. A slightly different example can be found in President Bush's State of the Union speech in 2003 when he stated: "The course of this nation does not depend on the decisions of others." (Washington Post 2003). These words were related with the arbitrary decision of US to invade Iraq in 2003 with no authorisation by the Security Council, violating the UN Charter (Glennon 2003).

The above example is also of immense significance for another reason. Apart from the fact that US violated the Charter, it also waged a war against Iraq in the name of freedom, democracy and in search of weapons of mass destruction (WMD) (Bell 1996). The fact that the UN inspectors have not found any WMD, which did not stop US

invading Iraq, unveils the 'blurring' of human rights purposes with state's interests (Douzinas 2013; Shick 2006). Although human rights are based on the inalienable equality of sovereign states, this today is considered a myth (Kennan 1946). It seems rather utopian for someone to think that a permanent nation of the UN's Security Council could ever be 'prosecuted' even in gross human rights violations.

The above facts, meaning the abuse of human rights by strong, sovereign states, portray what Donnelly has pointed out as a perverse 'unilateral universalism' (Donnelly 2007). Such examples are used by radical cultural relativists to invalidate the essence of human rights by claiming that human rights serve the western imperialism (Donnelly 2007). Additionally, they also unveil the need for a different approach which resides in the relative universality of human rights.

To conclude, the problematic nature of liberalism needs to be revisited by the West (Lang et al. 2006). The manipulation of human rights' enforcement, drawing on the previous section, underpins the need for a limited enforcement, namely, only in gross violations of human rights (e.g genocide). The international system, as it is constructed, remains in anarchy between conflicting interests and a growing demand from people for justice. This antithetical relation between theory and practice is the reason why even western theorists criticise human rights for inconsistencies and fallacious promises (Douzinas 2000). The disrespect of human rights by sovereign states raises one significant question: 'Who is the legitimate actor to enforce human rights'. In other words, 'who guards the guardians?' (Glennon 2003).

4. CONSIDERING CULTURAL DIVERSITY

So far, this paper has analysed the terms 'universal human rights' and 'enforcement'. Indeed, these terms unveiled many pathologies and 'traps' between human rights in theory and practice (Schick 2006). While the relative universality of human rights consists of a more 'just' way to promote them, when it comes to their enforcement, an even more limited view of human rights is needed. Thus, by narrowing down these two terms, a more coherent question derives. Should a minimal set of (basic) human rights be enforced regardless of the cultural differences? This is the question that this part focuses on.

It is fundamental to consider that over the centuries almost all cultures have used human rights (Donnelly 2007). Although these rights were not 'entitlements', but duties to individuals, it makes sense to think that a minimal set of human rights would not contravene religions and moral traditions, as they already endorse them in a way (Caney 2000). This 'convergence' between human rights and cultures, is the key point for theorists and human rights' policy-makers to build on rather than challenge.

The recent UN enforcement of human rights in Libya consists of a useful example to explore. That is not in terms of the outcome but instead on the consensus reached by multiple international actors to act against the mass violations of human rights. Early in 2011, the protests in Arab countries such as Tunisia and Egypt spread social unrest in Libya. Due to the Gaddafi's regime crackdown and the defections from his army and the government, the social unrest quickly escalated taking the form of violent protests. In return, Gaddafi's regime response was extremely violent and indiscriminate, leading to thousands of civilian deaths. It was in this turmoil, that the international community condemned Gaddafi's regime and the UN Security Council Resolution authorised permission to intervene.

Five years later, earlier criticisms over the regime change (Pattison 2011) and the casualties of the interventions (see Human Rights Watch, 2012) have proved to be right as the power vacuum created after the regime's fall is still tormenting Libya today. However, this example portrays in the best possible way that a consensus can be reached between diverse cultures. International actors with diverse cultures such as African Union and Arab World are not against the enforcement of the basic human rights. In the same notion, the Singaporean government official Bilahari Kausikan stated: "It makes a great deal of difference if the West insists on humane standards of behaviour by vigorously protesting genocide, murder, torture, or slavery. Here there is a clear consensus on a core of international law that does not admit of any derogation on any grounds" (Kausikan 1993).

Given these facts, it could be argued that human rights and diverse cultures are 'identical when they prescribe the same actions (Caney 2000). Thus, it is possible that the human rights debate between universalists and cultural relativists might be rooted within the practical implementation of human rights rather than to their essence. As part 2 illustrated, the abuse of human rights by powerful nations consists of their main pathology, and leads to a minimum set of rights. Furthermore, these abuses are usually set forth by authoritarian regimes to justify their own gross-violations. Additionally, radical culture relativists disguise violations such as genital mutilation and stoning as cultural diversities. Of course, none of these abuses should be tolerated as the former does not usually represent the will of their people and the latter should not be regarded as cultures but rather as subcultures (Bell 1996).

In sum, by attempting to answer this question, this paper has stressed the importance of enforcing only the basic human rights on different cultures, and instead promoting the remainder. Although cultural differences do exist, the core values converge with human rights (Caney 2000). On the contrary, human rights policy-makers need to realise that trying to make cultures 'fit' in the human rights Charter will make small or no difference. The notion that all cultures should conform into one, is controversial and at least problematic. Whether we like it or not, culture is fundamental to people. Instead of enforcing human rights as a whole (with bilateral outcomes), human rights need to 'fit' into cultures where this is possible (Bell 1996).

CONCLUSION

This paper has explored one of the main contemporary dilemmas in the 'realm' of human rights. That is, whether or not to enforce them to other cultures. The analysis has demonstrated that given the current conditions in the world, human rights should only be enforced in rare and extreme cases of violation. The appealing universality of human rights is at least dangerous. This can be easily understood when human rights are used as a vehicle to serve purposes that have nothing to do with their promotion. As such, this paper has stressed the point that the endeavour to enforce the wider concept of human rights on diverse cultures will prove futile. Human race usually resists violent implementations, and this is not the role of human rights. The essence of human rights lies in human dignity. Thus, instead of enforcing human rights, organisations like UN and each state should individually promote them.

In conclusion, many criticisms can be made against human rights, regarding their applicability, their western enforcement and their fallacies. Nevertheless, since their creation as norms, human rights have made a significant progress. Without disregarding the major failures that led genocides happen (e.g Rwanda) or cases

where more harm was caused (e.g Kosovo), the fact that a growing number of civilians in every part of the globe actively promote human rights dissolve any criticisms. Human rights can be metaphorically seen like democracy. The contemporary 'failure' of the democracy does not invalidate its significance, only gives the opportunity to criticise its defects and distortion. Thus, human rights consist of a struggle of the human race for dignity. Instead of criticism that annihilates human rights, theorists should choose constructive criticism to improve them. In their foundations, human rights can be seen as one of the greatest societal evolutions human beings have achieved. To respect and care about the dignity of others.

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