

THE UNIVERSALITY OF HUMAN RIGHTS AND DIFFERENT CULTURES AND TRADITIONS

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Summary

The article expresses to some extent the author's weariness and frustration with a discussion that is – in her opinion – mainly a tool in the hands of those who are interested in weakening respect for human rights. After confirming the principle of the universality of human rights, and taking a closer look at the reasons for challenging this principle, the author tries to present a useful approach to the discussion of the universality of human rights.

Are Human Rights universal? Do they apply to all human beings, irrespective of the culture or religion from which they originate? Are they inherent to all cultural traditions or just one? Can the differences between different cultures be bridged? Are human rights still an appropriate concept in the age of globalisation?

This article tries to give some answers to these questions but not from a scientific approach. It is not an analysis of the application of the universality of human rights in different cultural contexts. On the contrary, it is more the expression of a certain weariness and frustration with a discussion which, in the author's opinion, is mainly a tool in the hands of those who are interested in weakening respect for human rights. The article deals first with the confirmation of the principle of the universality of human rights (I), then takes a look into the reasons for challenging the universality of human rights (II), explains why human rights are not exclusively connected with certain cultural traditions (III), deals with the concept of human responsibilities (IV) and finally tries to find a useful approach to the discussion of the universality of human rights (V).

I. The Universal Declaration of Human Rights, which was proclaimed in December 1948 by the General Assembly of the United Nations, was the *first international* articulation of the rights and freedoms of all members of the human family in history. All its predecessors were national or regional declarations. The text was not formulated only by representatives of western Christian traditions: ideas from Buddhist, Islamic and Hindu traditions also made their way into the Declaration.¹

From paragraph 1 and 2 of the preamble of the Universal Declaration of Human Rights one can see that the idea of the universality of human rights is a corner stone of the declaration:

¹ Mary Robinson, Die Allgemeine Erklärung der Menschenrechte – ein lebendiges Dokument, in: Jahrbuch Menschenrechte 1999, Frankfurt 1998, p. 31ff.

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of *all members of the human family* is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of *mankind*, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the *common people*, ..."

What it means to call the universality of human rights into question can be seen if one follows the consequences of a denial to the end. Take Article 5 of the Declaration: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Is anybody seriously arguing that a person from the western hemisphere should not be tortured whereas somebody from Sudan or Tibet might be subjected to torture because torturing people is part of his or her cultural context? Is the ban on slavery only valid for people from Europe and not from Africa? Is the mass rape of Korean Women by Japanese soldiers really an integral part of Asian culture and values?

No, these examples show that much of the ongoing discussion on the universality of human rights is either an intellectual luxury enjoyed by those who never became and are sure never to become victims of human rights violations – or by those who have a real interest in challenging the universality of human rights.

II. How is it that this discussion has nonetheless been going on for such a long time?

- One reason is that initially, during the Cold War between "the East" and "the West", and after that in the antagonism between "the South" and "the North", representatives of both sides have claimed that a certain kind of human rights were core human rights and that the others would apply secondarily or be more some kind of political declaration of intent. This antagonism between civil and political human rights and economic, social and cultural rights has been superceded some time ago even though it is still present in some people's minds. Phrase 5 of the Final Declaration of the Vienna World Conference on Human Rights in 1993 stated that all human rights are universal, indivisible and interdependent and interrelated. Also, according to juridical theory, all human rights - civil and political as well as economic, social and cultural rights - have three aspects: "respect" – the traditional dimension of defense against any interference of a state in liberties; "protection" – against abuses of human rights; and "fulfillment" – in the sense of giving access to something, e.g. to farmland with regard to the right to food. Interestingly, when it now comes to making economic, social and cultural rights operational, it is very often the very same states which have been advocating these human rights in earlier times that then become rather more reticent for example when it comes to establishing a Protocol on a procedure for complaints to the Covenant on Economic, Social and Cultural Rights.
- Another reason is the selective approach of western states which somewhat arrogantly claim to be the custodians of human rights worldwide, when it comes to human rights violations under their own jurisdiction – Guantánamo and the undermining of the ban on torture by the United States of America under the Bush administration - or in countries they are related to politically – e.g. Saudi Arabia. This selectivity serves to feed the argument that the concept of human rights is just a tool in the hands of western states to impose their political and economic interests.
- Thirdly, a stance opposing the universality of human rights is very useful for certain people. It is thus very revealing to see who uses the argument that in such and such a state human rights as they are enshrined in the Universal Declaration, are incompatible with the cultural traditions of that state. It tends to be the governments that violate those human rights. Representatives of civil society, human rights defenders and victims of human rights violations from these same states argue just

the opposite. There is the example of the famous Nigerian writer and Nobel Prize winner, Wole Soyinka, who says that the denial of the universality of human rights is just alibi talk²; there is the former Chinese dissident Wei Jingshen, or the Declaration of Bangkok of the Asian Non Governmental Organizations of March, 29, 1993 in the run-up to the World Conference on Human Rights. 240 representatives of over 110 non-governmental organizations from 26 Asian states confirmed that human rights have roots in many different cultural traditions. Many other examples from Asia or Africa could be mentioned. Are these people not part of their culture because they are fighting for women's rights, freedom of opinion etc.? Who denies them from being a part of their culture? What legitimacy do those doing so carry?³

III. Is the idea of human rights an integral part of a certain cultural tradition?

Let us first have a closer look at the western traditions. It shows that there have been - and still are to a certain extent - strong tensions between western cultural traditions and human rights. Not only with respect to the lack of implementation of human rights in reality, but also with regard to the concept of human rights. One has only to recall the persecution of witches in medieval Europe and in puritan America. There is a long and strong tradition of racism and anti-Semitism in Europe coming to its peak in the Shoah. There has been a long tradition of torture. Churches have been very reluctant until quite recently to accept the idea of human rights. Human rights as such are not genuine Christian values even though in the course of their development they have been intertwined with aspects of Christian belief in many ways.⁴

On the other hand, what many of the critics of the alleged western concept of human rights claim when they say that it is only concerned with individual rights, is not true either⁵:

- In western societies, e.g. in the USA, there is also a debate about communitarism.
- Furthermore, many rights that are first and foremost individual rights have a collective dimension. Religious freedom is a good example. Article 18 of the Universal Declaration of Human Rights reads as follows: "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." The significance of freedom of opinion for a democratic state above the individual right lies in the protection of the open discussion of issues of public interests in a democratic society. Families are also protected by human rights⁶.
- Thirdly, all the individual rights and freedoms of a person find their limits where the rights and freedoms of another person begin. Art. 29 paragraph 2 of the Universal Declaration of Human Rights reads as follows: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." The aim is the free merger of a community enabling a cultural diversity open to different cultural traditions within the

² Wole Soyinka, Kulturelle Ansprüche und globale Rechte, in: Jahrbuch Menschenrechte 1999, Frankfurt 1998, p. 37ff.

³ Heiner Bielefeldt, Der Streit um die Menschenrechte, in: Menschenrechte im Umbruch, Neuwied, 1998, p. 31ff, 35.

⁴ Wolfgang Huber, Recht und Gerechtigkeit, Gütersloh 1996, p. 240ff.

⁵ Bielefeldt, 40.

⁶ Article 16 of the Universal Declaration for Human Rights reads: (1) 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. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

framework of human rights. There is no binding model of marriage or family imposed by human rights.

In the Islamic world there have also been attempts to trace the idea of human rights directly back to the Qur'an⁷. With regard to women's rights, one can say that in terms of history the provisions in the Qur'an concerning women were a step forward in the direction of more safeguards for them. (As in the Bible where statements on the death penalty already narrowed the scope of its applicability.) And it is interesting to note that there are Islamic scholars who do speak up for the idea of secularisation by saying that legitimizing earthly power through religion is blasphemy because it is degrading the singularity and transcendence of God.⁸

If one looks at the arguments promoted in Islam and in Christian belief against the concept of human rights, similarities can be found: in the many Islamic traditions where political power is traced directly back to the Qur'an, there is little room for political participation by subordinates – as little as in the Gottesgnadentum (divine right) of European feudalism.

In cases of violation of human rights, there are also examples of where different cultures coincide. Wole Soyinka points out the fact that in prisons the world over, the withdrawal of writing material is a common punishment for prisoners.

What is the result of these findings?

- First of all, there is no single cultural tradition that "stands for" human rights.
- Secondly, as Wole Soyinka puts it, from all kinds of cultural traditions, arguments and strategies may be drawn that humiliate or that exalt human beings, as much for slavery and oppression as for the liberalization of human beings.
- Thirdly, culture: cultural traditions are not stable, they change, they develop and today more than ever before, in this age of globalisation and communications across continents and knowing no borders.

IV. Are Human Rights still an appropriate concept in the age of globalization?

Some of those who - as mentioned above - lament the allegedly individual concept of human rights, blame it for the unbounded individualism of today's globalized world. To counterbalance this they call for a Declaration of Human Responsibilities. In 1997, the Inter Action Council, a worldwide gathering of elder statesmen, presented the first draft. It has within it certain fundamental flaws:

- **As already shown above, the basic assumption already that human rights is purely individualistic in its approach is not correct. The Universal Declaration of Human Rights itself states in Article 29, paragraph 1: "Everyone has duties to the community in which alone, the free and full development of his personality is possible." Or as Bishop Wolfgang Huber puts it: "Human dignity materializes in the life of the community". The assertion that human rights are responsible for individualization in the world has been an argument against human rights for a long time even before the age of globalization – and is commonly used by leading evangelicals against the concept of human rights as such.**
- **In the relationship between individual and state there is no symmetry between rights and responsibilities. Human rights based on the idea of human dignity are pre-state, unalienable and unconditional. They are not granted on the condition that certain responsibilities are met. Dangerous**

⁷ Even though the contrary can be found more often.

⁸ Bielefeldt, p. 44.

criminals also have their human dignity that has to be respected. Human rights are the counterbalance to the subordination of citizens to a state to which they have given the monopoly of the use of force. Citizens are protected by human rights against the superior position the state derives from its monopoly of the use of force. As mentioned above, they find their limits in the rights and liberties of other persons.

Furthermore, the articles of the draft are formulated flabbily and are therefore open to abuse. Article 4 of this draft cites the Categorical Imperative of Immanuel Kant, "Act only according to that maxim whereby you can at the same time will that it should become a universal law", by stating: "Do as you would be done by." Article 10 states the responsibility of all human beings to develop his or her abilities through diligence and hard work. Who is this exhortation addressed to? Effectively anybody, as in Article 13 of the draft: "Politicians, civil servants, economic leaders, writers, artists.....". The result could easily be a certain model of society that is not open for different cultural traditions.

Human rights are not instructions for the correct conduct of one's life or for the life of communities; instead they establish a legal and political scaffold for a life in dignity. The opposite of the liberty guaranteed by human rights is not political or communitarian solidarity, but oppression by the state or the community. Human responsibilities may give moral guidelines for human beings to live together, but not at the same level as human rights, not with the same binding force.

V. What then does the concept of the universality of human rights imply?

Some authors argue that human rights are such a new concept that they are not compatible with any existing cultural tradition, that they represent a complete break with any of these traditions. The danger here is that these traditions are seen as something backward that has to be superseded. This belief in modern progress is as problematic as the tracing of human rights back purely to traditional western roots. Human rights do not oblige human beings to step out of their culture.

Whereas human rights cannot be identified with one or other cultural tradition, they are a reaction to fundamental experiences of injustice and oppression in all continents and cultural traditions. They have had – and still have - to be fought for in all societies.

The idea of human rights can be taken up by different cultures and cultural traditions. And in this regard the discussion of the universality of human rights can be very helpful. Not by excluding human rights from certain traditions, not by dividing people further by denying them abilities and insights, but by taking the differences between the traditions seriously and nevertheless trying to find what points of contact exist. That effort should be an important part of the dialogue between religions and cultures with the aim of developing a common language and culture of human rights.