

Universal human rights – really?

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As we've seen, the adoption of the Universal Declaration of Human Rights in 1948 was a momentous achievement for many reasons, not the least of which was the fact that United Nations (UN) Member States agreed on a list of basic human rights that were valid across all human communities, regardless of culture, politics, class, gender or other distinctions.

The Universal Declaration of Human Rights (UDHR) not only proclaimed (in Article 1) "All human beings are born free and equal in dignity and rights", it went on to articulate the precise scope of these rights.

The question I want to address in this clip is simply – is it possible to agree a universal code of human rights? That is valid for all human beings? Although most of the rights guaranteed in the Universal Declaration of Human Rights are individual rights, humans do not for the most part live an atomized, individualistic existence. We are members of families, communities, ethnic and religious groups. Our lives and personalities, our preferences, our beliefs – all are shaped by this membership and by social interaction in the particular cultural contexts they imply. And these contexts differ markedly across the globe.

To say individuals have rights is to invoke some appeal to an ethical outlook that prescribes certain forms of behavior. Surely, this will have some cultural specificity. Can we understand women's rights, the rights of children, or religious freedom separate from particular cultural contexts in which rules as regards each are formulated?

Such skepticism about the validity of a universal human rights code that is blind to borders (of both the political and cultural kind) is often referred to as cultural relativism, or just relativism - in contrast to the universalism of human rights claims.

There are different versions of the relativist critique of universal human rights. A weak relativism asserts that while some practices or rules of human behavior may be universally valid (e.g. it is wrong to kill unarmed civilians), many clearly are not, particularly in relation to issues of religion, sexuality, and the family. This is claimed as an empirical fact, but one that puts in doubt at least some of the universal claims of the human rights project.

A strong relativism goes further, arguing not only that diverse cultural contexts give rise to diverse beliefs and ethical codes, but that where local tradition and/or belief collide with a "universal" right, to insist on the universal rule is a form of cultural imperialism. And usually one that is tied to imposing modern, liberal, secular (and western) values on traditional, non-secular (and non-western) societies.

In this strongly relativist view, outsiders may object to the practice or belief as morally wrong, but they shouldn't be able to invoke international law to over-ride local cultural preferences.

I'm simplifying the arguments. There are many nuances to the relativist position. And, many human rights advocates who believe in the universality of rights also believe that culture and tradition are important and shouldn't be ignored or treated with disdain. After all, tolerance and the protection of diversity are important human rights values in themselves.

The universalist/relativist debate is familiar to students of political philosophy, and to explore it fully is beyond the scope of this module or this course. Rather, I want to approach the problem more pragmatically, by examining some arguments that repeatedly arise in real-world discussions on contentious human rights.

What do those defending universal human rights say in response to claims for cultural specificity? And how do those skeptical of human rights universalism defend their position?

I will outline four arguments and the counter-arguments, and afterwards suggest how it might be possible, at least to a limited extent, to find common ground between the two sides.

First

The legal argument

The first argument in defense of universality is one grounded in international law. States sign and ratify human rights treaties. Treaties covering contentious issues like women's rights, the rights of the child, religious freedom, free speech and others, are very widely ratified, by states from very diverse political, cultural and religious traditions.

If culture were of primary importance, why would states ratify treaties that require changes in domestic law that will contravene these traditional practices or beliefs?

And in any case, as a matter of law, having ratified, states cannot defer to local traditions where these conflict with the treaty guarantees.

In response to this legal argument, the skeptics make two kinds of arguments. First, they argue that states ratify human rights treaties for many reasons, and they may do so simply because they feel it is a necessary but pro forma requirement of membership in the international community of states. It signals no real commitment to the so-called universal values embedded in those treaties.

Further, even if there is such commitment from the political leadership of the state that actually makes the decision to ratify, this hardly shows a deeper, societal commitment to those values. In many countries, the state is quite weak, and its institutions remote from the reality of most people's lives.

And second, skeptics point out that states can make reservations when they ratify human rights treaties – a reservation is a legal declaration accompanying a notice of ratification that simply indicates which parts of the treaty the state might not fully accept. Many states have made reservations in ratifying treaties on women's rights, right of the child, equality, sexuality, etc – clearly indicating continued disagreement, at least as regards some human rights.

The commonality argument

A second argument in defense of universality is grounded in the idea that the basic values found in international human rights law – for example, individual autonomy, tolerance, protection of the marginalized, justice and fair punishment, and the accountability of the ruler – are common to all (or almost all) cultural and religious traditions.

The drafting history of the Universal Declaration of Human Rights shows how an effort was made to reach out to different cultural traditions in agreeing a list of rights, and further the list as agreed is hardly purely "western" or even purely "liberal" in orientation. For example, economic and social rights were included, though these had less resonance in western, free market economies.

Similarly, in some areas, western ideas about rights were changed – for example, the right to freedom of expression under international law does not protect hate speech, although in the United States free expression rights are more far-reaching (and would protect hate speech).

In response to the commonality argument, the skeptics agree that many values resonate in all cultures. However, they say, to agree that justice and tolerance are universally valid does not mean that all cultures agree that the best way to uphold these values is through the declaration of individual human rights, protected by law.

An alternate approach stresses the importance of community and family, and one's duties within each – duties to other members of the family and duties to the community as a whole. Though inherently suspect to those raised in a western, liberal tradition, the idea of promoting individual duties, rather than (or alongside) individual rights, is not necessarily an entirely misguided means of upholding a commitment to tolerance or protection for the vulnerable.

The popularity argument

A third argument in defense of universality, the popularity argument, rests on the obvious appeal of the human rights discourse in many countries, and across very diverse cultures. If human rights did not resonate with individuals around the world, why have so many struggles for justice used the language of human rights?

The worldwide growth of the human rights movement is undeniable; and so too is the fact that the victims of human rights abuse rarely invoke culture to excuse that abuse. Rather, that is the strategy employed by the powerful who perpetrate or perpetuate such abuse. The campaign for women's human rights at a global level has been so empowering because women from so many diverse cultures found in the language of human rights an effective tool to confront discrimination and patriarchy.

In response to the popularity argument, the skeptics claim that the appeal of human rights is more limited than claimed. While human rights Non-Governmental Organizations (NGOs) are found all over the world, in many countries they represent elite opinion and are not broadly representative. Funding for the promotion of human rights has come for the most part from western countries, and this has also influenced the emergence of a so-called "global" human rights movement.

Further, even if local struggles adopt the language of human rights, there is little hard evidence to show doing so makes their message more appealing or more impactful. Finally, if the popularity of an idea were evidence for its deep acceptance, one would have to note that at the same time as the human rights discourse advances, so too do discourses grounded in xenophobia, and various fundamentalist creeds that deny the idea of universal human rights. Indeed, the human rights idea may for many be associated with globalization that, arguably, fundamentalist movements are reacting against.

The change argument

A fourth argument in defense of universality, the change argument, challenges the supposed rigidity of culture and tradition. Culture is not immutable, tradition changes, as do so-called fundamental beliefs. To defend uncritically local culture against universal values is to impose the same sort of absolutism that is said to inhere in universality, because it assumes local culture is timeless and transcendent. Obviously it is not. All human societies change in the face of an array of internal and external factors and influences.

Further, this is not simply about supposed traditional and "undeveloped" societies changing to accept the liberal assumptions of supposed "modern" and democratic societies. As noted earlier, a global discourse on universal human rights has resulted in agreement on some rights not traditionally linked to liberal or western thinking, like economic and social rights. Or, as another example, the US Supreme Court eventually ruled that the death penalty could not be applied to those under 18, citing as one reason a growing global consensus against the practice.

In response to this argument – that cultures change and are influenced by others – the skeptics agree, but they insist that it is better if they do so through an internal process, not through external imposition. When universal human rights are asserted from outside, this may even be counter-productive to the process of an internal re-evaluation of a particular practice. Moreover, the best tool to facilitate internal reflection may not be universal

human rights codes, but rather forward-looking interpretations of internally valid ethical frameworks (grounded in religious belief, for example).

For example, efforts in Africa to eradicate the practice of female genital cutting have had great success when grounded in local initiatives that are based in inter-communal dialogue involving elders and not the law and human rights.

Okay. Having reviewed the four arguments for and against universality, is it possible to find some common ground?

Happily, yes, and it is based in this last idea of change – and dialogue. Both the universalists and the skeptics agree that tradition and culture change, and even strong universalists would agree that change that is internally driven is preferable to change that is externally imposed (if only because the former is likely to be more effective than the latter).

Further, even strong universalists have no reason to object if human rights principles go through some process of translation to be made locally relevant – for example by appeals to local religious codes or other ethical frameworks. The point is to end the abusive practice, not to insist that one do so by convincing people or to not necessarily do so by convincing people they have legally protected rights. The result is that where a cultural tradition – for example the marriage of young girls – conflicts with universal human rights principles, both sides can agree the best way to end the practice is through local efforts to change attitudes that perpetuate this practice.

This doesn't solve all the disagreements. Dispute will continue about how fast that change should come about, and whether external actors have any legitimate role (and if so, what sort of role?). Moreover, as regards some specific beliefs, customs or traditions, there may be no "local" interest in changing them – they may be seen as eternally valid - for example, in some countries, where laws based on sharia punish apostasy or denunciation of one's religion. And where this is true, arguments about whether international human rights law or local tradition takes precedence are inevitable.

But on this last point it is worth reiterating that the defense of a "local value" over an international human rights norm is a tactic relied on by many countries, western and non-western alike. It is also worth pointing out that it would be a rare case indeed where there were no local actors who objected to abusive practices justified in the name of tradition; too often, however, their voices may not be heard.

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