

A CRITICAL APPRAISAL OF THE CRITICISM THAT THE LANGUAGE OF HUMAN RIGHTS EXPRESSES INDIVIDUALIST NORMS THAT ARE ALIEN AND DETRIMENTAL OF THE ETHICS OF MANY CULTURES

“The human understanding is like a false mirror, which, receiving rays irregularly distorts and discolors the nature of things by mingling its own nature with it.”

(Francis Bacon, Novum Organum, Aphorism 41)

UMA AVALIAÇÃO DA CRÍTICA DE QUE OS DIREITOS HUMANOS REFLETEM NORMAS INDIVIDUALISTAS QUE SÃO INADEQUADAS E INFRIGEM OS VALORES ÉTICOS DE MUITAS CULTURAS

José Anastácio de Sousa Aguiar¹

Resumo

Este artigo faz uma avaliação crítica sobre umas das principais críticas que incidem sobre os Direitos Humanos: o fato de que seus valores universais refletiriam imposição da cultura dominante, sem o devido respeito às peculiaridades de cada grupo social. Defende a aceitação de normas mínimas relativas aos Direitos Humanos independentemente de cultura ou grupo social, pois são inerentes à natureza humana, o que põe em lados opostos os relativistas e os universalistas. Evidencia o atual uso do relativismo em respaldo à manutenção do poder de grupos regionais dominantes e destaca a noção de que valores universais não são necessariamente valores uniformes e caracteriza sua influência na proteção dos indivíduos contra governos.

Palavras-chave: Direitos Humanos; relativismo; universalismo.

¹ Public Lawyer, Master of laws (Human Rights) - London Metropolitan University.

Introduction

One of the oldest and fierce controversies in the field of human rights is linked to the question about the universal or relative character of these rights. In other words, should be given equal treatment in all nations to the internationally recognized human rights, or whether are they subject to changes in the hierarchical rankings according to different cultural basis on which a society has developed, adapting to the ethical values of each culture?

Some critics believe that the universal character expresses the individualistic values and the dominant culture, without respecting the peculiarities of each group and ethical culture. This essay seeks to identify the issues surrounding this question, reaching to a final conclusion on the proposed topic.

Definition

First of all, it is important to understand the limits of the concept that will be studied. In one extreme, there is the radical cultural relativism, and in the other, there is the radical universalism: “The two extreme positions on cultural relativism can be called radical cultural relativism and radical universalism. Radical cultural relativism would hold that culture is the sole source of the validity of a moral right or rule. Radical universalism would hold that culture is irrelevant to the validity of moral rights and rules, which are universally valid.” (ADD0 2006, p. 173)²

Within those limits are the different conceptions about the interpretation and acceptance of the protection of human rights.

Universal Character

In the foundation of the rhetoric on human rights, there is the assumption that human nature is universal and common to all individuals. And it could not be any other way, because if it were, it would be illogical to advocate the existence of a universal declaration of rights.

In this context, one can say that the doctrine of universal has its roots from the conceptions of the theory of natural law (MCLEOD 2007, p. 20)³. Under this doctrine, these natural laws

² ADD0, Michael K. – International Law of Human Rights – Ashgate – 2006 – p. 173.

³ “However, this must be amplified by saying that all natural lawyers would probably that, because law may, in the final analysis, involve the coercive power of the state, the basis of the law should at least be moral, because otherwise the

establish certain rights inherent to all human beings and represent, as a result, a higher law, which would be considered the supreme parameter to be observed in the preparation of national and international standards relating to the humanistic dogmatic.

For the universalists, there is a set of minimum rights inherited by all peoples, as follows: “Put simply, the partisans of universality claim that international human rights like rights to equal protection, physical security, free speech, freedom of religion and free association are and must be the same everywhere.” (STEINER and ALSTON 2000, p.366)⁴

These minimum sets of rights go beyond cultural differences, and should function as true magnetic north in the preparation of laws on human rights. These rules should provide basic guidelines to be prosecuted for the protection of members of a society. The result of taking basic rules established for the protection of human dignity by an international body representative of all nations, or at least almost entirely (for example, the United Nations), would not only be limited on their wide acceptance, but also their wide applicability among different peoples.

Thus, the acceptance of human rights as inherent to all individuals, no matter their nationality, is one of the crucial assumptions to its actual implementation. The colluding with any graduations of those rights would have been a constant threat to the effective protection that is intended to offer to individuals.

This does not imply that it is not possible to accept any kind of regional influence in the implementation of these standards. In fact, only the essence, the value ultimately provided, should be promoted and similarly guarded among all peoples.

Currently, what is happening is that the universality of human rights have been interpreted considering the different contexts, as it is said: “International human-rights institutions have generally accepted that universal human-rights standards ought to be interpreted differently in different cultural contexts.” (FREEMAN 2002, p. 104)⁵

The Cultural Relativism

The proponents of cultural relativism, in turn, insist that the standards concerning human rights should be considered and implemented in accordance with the different cultural contexts. The supporters of this current attempt to impose the idea that there is a huge cultural variety among the many societies that are spread throughout the world and therefore all kinds of local customs would

state will be a party to immoral conduct.” MCLEOD, Ian – Legal Theory – Palgrave Macmillan – 4th edition – 2007 – p. 20.

⁴ STEINER, Henry J. and ALSTON, Philip – International Human Rights in Context – Oxford University Press – 2nd edition – 2000 – p. 366.

⁵ FREEMAN, Michael – Human Rights – Polity Press – Cambridge – 2002 – p. 104.

need to be deemed valid. It would not be correct electing a limited number of cultural models, which would be taken as universal standards, and based on them, assess and stigmatize all the others that are not consistent with them, as follows: “Advocates of cultural relativism claim that (most, some) rights and rules about morality are encoded in and thus depend on cultural context, the term culture often being used in a broad and diffuse way that reaches beyond indigenous traditions and customary practices to include political and religious ideologies and institutional structures”. (STEINER and ALSTON 2000, p.366, 367)⁶

Human dignity would still be an important principle to be preserved but, unlike the universalist, the relativist doctrine has used more a collective approach to the same protection of dignity, through interactions with society itself, which police the actions of individuals. This is why severe behavioral control by the community is allowed.

In fact, this would be tantamount to say that the social structure has its own internal mechanisms to protect its citizens, despite the fact that these instruments may not match those employed in international documents. And, therefore, the protective guidelines outlined by international human rights standards would be not only unnecessary, but also inappropriate to prevent and repress any violence perpetrated against human beings.

The relativists, moreover, calling the inadequacy of standards on human rights as called today, argue that they are located on the universalist side of the dispute.

The Relativism as Maintenance of Power

It is very interesting to observe that the most enthusiastic advocates of relativism are governments and religious authorities interested more in maintaining the power and the consequent preservation of the *status quo* acquired than in effective realization of the basic needs of their societies: “It thus remains understandable that some grass roots human rights activists assail the universality of human rights in terms of cultural and political imperialism and that some heads of states and governments construct justification of their impunity for violation of human rights norms and standards by appeals to cultural differences.” (BAXI 2006, p.160)⁷

This kind of relativism is more common in developing countries. They often argue that they cannot afford human rights, since the tasks of nation building, economic and the consolidation of the state structure are still unfinished. They say that authoritarianism is more efficient to promote

⁶ STEINER, Henry J. and ALSTON, Philip – *Op. cit.*, p. 366 and 367.

⁷ BAXI, Upendra – *The Future of Human Rights* – Oxford University Press – 2nd edition – 2006 – p. 160.

development and economic growth. It is suggested that the limitation of human rights may be understood as the sacrifice of the few for the benefit of the many, as follows:

Government officials denounce the corrosive individualism of western values – while they line their pocket with the proceeds of massive corruption, drive imported luxury automobiles, and plan European and American vacations. Leaders sing the praises of traditional communities, which they claim as a source of their political practices – while they wield arbitrary power antithetical to tradition values, pursue development policies that systematically undermine traditional communities, and replace traditional leaders with corrupt cronies and party hacks.” (ADDO 2006, p. 185)⁸

Occidental Values

A major obstacle to be overcome, perhaps the largest, to reach a broader acceptance of human rights internationally recognized, is that the assertion that this humanistic dialectic is a concept originally born in the West and, consequently, does not reflect the reality of Eastern countries, as follows: “To the relativist, these instruments and their pretension to universality may suggest primarily the arrogance or ‘cultural imperialism’ of the West, given the West’s traditional urge – expressed for example in political ideology (liberalism) and in religious faith (Christianity) – to view its own forms and beliefs as universal, and to attempt to universalise them.” (STEINER and ALSTON 2000, p. 367).⁹

Undoubtedly, this vision of the human rights has its cradle in the Western world. The primary source of the ideas of individual freedom, democracy, human rights and other privileges of the genre is the West or, more precisely, Europe. This cannot be inferred, however, that other nations should not adopt and strengthen them only for this reason. This type of rivalry and prejudice, unfortunately, has often been the major factor that inhibit the adoption of a cosmopolitan system for protecting human being who earned universal resonance.

Another important argument proposed aiming to refute these Western standards is based on the history of the formulation of many of the instruments concerning human rights. Many countries in Africa and Asia, by way of example, did not participate in the drafting of the Universal Declaration of Human Rights, because they were colonies at the time and thus were not considered members of the United Nations.

On the evidence, the humanistic thinking in this field, because of their own cradle, is not a universal ideology, with equivalent effect among all ethnic groups. Not mean, however, that it should not be universally chancellor. In summary: “In the conditions of modern society, rights,

⁸ ADDO, Michael K. – *Op. cit.*, p. 185.

⁹ STEINER, Henry J. and ALSTON, Philip – *Op. cit.*, p. 367.

especially human rights, are a particularly appropriate mechanism for protecting this basic, relatively universal core of human nature and dignity.” (ADDO 2006, p. 188)¹⁰

Universality, not Uniformity

Perhaps one of the points that have not been well understood by critics of the universality of human rights is the fact that it is not the same as uniformity. Accepting the universality does not require removing all cultural, philosophical and religious variations of a particular social group, nor presenting a magic formula for resolving all problems. More so, submitting a minimum set of values that reflect what is human in every individual, from which no human being can be excluded.

In this context, human rights derive from the simple fact of being human and not depend on any particular benefit from any government or legal code. The differences of culture should serve to enrich the similarities and not deepen the differences, because for most paradoxical that is, only the protection of human rights can ensure diversity.

Despite the differences that still remain between a wide range of conceptions on human rights implementation, it is possible to see a bright future, as it is happening in Europe, as follows: “In spite of the differences between Eastern and Western Europe in the domain of human rights as they are related to the different backgrounds, (...). Eastern European states accept global human rights treaties and incorporate civil and political rights in their national legislation. Western European states are becoming stronger oriented toward social, economic and cultural rights.” (BERTING 1990, p. 113)¹¹

¹⁰ ADDO, Michael K. – *Op. cit.*, p. 188.

¹¹ BERTING, Jan – Human Rights in a Pluralist World: individuals and collectivities – UNESCO – 1990 – p. 113.

Conclusion

In summary, it can be said that the most reasonable position to the question proposed lies in what was expressed by the World Conference on the Human Rights in June 1993 (Vienna Declaration), which reaffirms the universal character of human rights, but qualifies this statement, as follows:

Solemnly adopts the Vienna Declaration and Programme of Action.
 “1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

(...)

“5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, (...)”¹²

That will not put an end to this controversial issue, but makes an important step that may in future be found a formula that could finally reconcile the universality of human rights with regard to the ethical principles of each culture.

Despite all precariousness listed in a globalized world like today, where there are modern means of communication and transport, the interactions between civilizations have become a constant, which will mean an exchange of cultural values increasingly, and to some degree, desirable. What will result is what is expected, a higher predisposition for tolerance among different peoples regarding the ideal of protecting human dignity in all its facets. For that, finally, to be established a common code of standards, which receive acceptance in all nations, which would provide a more effective protection of the rights inherent to the human person, regardless of their racial, historical and cultural lineage.

12

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.24+\(PART+I\).En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.24+(PART+I).En?OpenDocument) (accessed in 27/11/2008).

Bibliography

ADDO, Michael K. – International Law of Human Rights – Ashgate – 2006.

BAXI, Upendra – The Future of Human Rights – Oxford University Press – 2nd edition – 2006.

BERTING, Jan – Human Rights in a Pluralist World: individuals and collectivities – UNESCO – 1990.

FREEMAN, Michael – Human Rights – Polity Press – Cambridge – 2002.

MCLEOD, Ian – Legal Theory – Palgrave Macmillan – 4th edition – 2007.

STEINER, Henry J. and ALSTON, Philip – International Human Rights in Context – Oxford University Press – 2nd edition – 2000.

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.24+\(PART+I\).En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.24+(PART+I).En?OpenDocument)