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The Scope of Human Rights in Today's World

The actual scope of universal human rights remains a subject of intense debate. Do individual rights take priority over communities, or should 'shared values' enjoy pride of place?

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In yesterday's [article](#) we broadly outlined the historical development of human rights, which we argued are underpinned by the familiar "equal inherent dignity" of every human being. But while such principles are enshrined within a host of mechanisms at the international level, the actual scope of universal human rights remains a subject of intense debate. Do these individual rights, for example, take priority over communities, or should 'shared values' enjoy pride of place? We begin our analysis of the necessary (and desired) scope of current human rights by exploring this particular debate. But this cosmopolitan versus communitarian divide over rights is by no means the only academic debate available to us. A brief overview of Jack Donnelly's *The Relative Universality of Human Rights* (2007) demonstrates that cultural relativists also have some interesting opinions to share when it comes to these particular types of rights.

Cosmopolitanism vs. communitarianism

Cosmopolitan thinkers such as Charles Beitz argue that human rights must be universal in terms of their scope and applicability. They apply to all human beings regardless of nationality, class, gender and ethnicity. At the same time, state boundaries cannot (and should not) limit the applicability of such rights because they are inherently arbitrary and most people do not have the opportunity to choose their citizenship. It is strictly a matter of good or bad luck that determines whether individuals are born into a wealthy and secure country, or into a poor and unstable one. Hence, Beitz argues, the moral standing of any particular state depends on its domestic institutions – i.e., whether or not they protect the human rights of their citizens.

In contrast, communitarians such as Michael Walzer contend that factors such as the self-determination of communities should take priority over the application of supposedly universal human rights. The communitarians further attach considerable value to state boundaries and sovereignty as needed tools that protect communities from predatory forms of outside interference. But just who and what are you protecting, critics might ask. A significant flaw within the communitarian approach is that borders are often arbitrary and by no means reflect the actual religious and cultural affinities of the people who live within them. This is especially the case with former Great Power colonies in the Middle East, Sub-Saharan Africa and Asia. As a result of imperial land-grabs and lines drawn in the sand, there are many post-colonial states in which one ethnic

grouping wields disproportionate and rights-violating power over another. And there are also many state boundaries that cut across cultures and communities ([Kurdistan, for example](#), falls within the border regions of Turkey, Iraq, and Iran).

Finally, and in contrast to the tidy opposition described above, there are communitarian thinkers such as David Miller who try to apply universal human rights to their arguments, even if they do it thinly. While Miller emphasizes that notions of justice vary across societies (a communitarian position), his own conception of global justice is sufficiently strong that it pays due respect to the idea of world-wide human rights (a cosmopolitan position). So, it may be argued that at least some communitarians and cosmopolitans have arrived at a consensus – i.e., a consensus that believes in protecting distinct cultural norms and practices, but only if they do not violate the basic human rights of any individual, regardless of however broadly those are defined.

From relativism to relative universality

The cosmopolitan-communitarian (partial) divide demonstrates the complexity of arguments made for and against the application of universal human rights. In *The Relative Universality of Human Rights*, Jack Donnelly adds to this complexity by outlining an extensive list of factors that need to be accounted for in human rights debates. These include the ideas of:

- Conceptual and Substantive Universality;
- Universal Possession versus Universal Enforcement;
- Historical or Anthropological Universality;
- Functional Universality;
- International Legal Universality;
- Overlapping Consensus Universality;
- Ontological Universality;
- Local Self-Determination and Sovereignty;
- Universal Rights versus Identical Practices;
- And Universalism without Imperialism.

Among Donnelly's more interesting observations is that the most common argument for relativity (as opposed to universality) in rights is the already-discussed idea of culture. Cultures obviously differ across time and space, a fact that not even the staunchest defenders of cosmopolitanism would deny. As Donnelly defines it, "cultural relativism is a set of doctrines that imbue cultural relativity...with prescriptive...force." However, when cultural relativism is taken to its extreme, it holds that "culture provides absolute standards of evaluation." Accordingly, human rights cannot be universal because supposedly 'alien' moral standards should not be imposed on any culture. At first blush this might seem like a reasonable argument, but, as Donnelly further outlines, there are very serious problems with the cultural relativist view:

1. "It risks reducing 'right' to 'traditional', 'good' to 'old', and 'obligatory' to 'habitual.'"
2. "The equation of indigenous cultural origins with moral validity is deeply problematic." (Culture, in other words, is not infallible).

3. "Intolerant, even genocidal, relativism is as defensible as tolerant relativism. If my culture's values tell me that others are inferior, there is no standard by which to challenge this."
4. "Cultural relativist arguments usually either ignore politics or confuse it with culture". . . . "Culture in such arguments involves voluntary compliance that merits external respect. The often- deeply coercive aspect of culture is simply ignored."
5. More often than not, "the cultures described are idealized representations of a past that, if it ever existed, certainly does not exist today."
6. "The typical account of culture as coherent, homogenous, consensual, and static largely ignores cultural contingency, contestation, and change."

Donnelly argues, in other words, that culture can – and should – be tested against independent, universal standards.

While there are plenty of good reasons for rejecting extreme cultural relativism, there are also compelling reasons to allow for cultural differences. As highlighted above, some relativists and universalists have attempted to transcend either/or thinking. Donnelly, for his part, points to the importance of distinguishing between universal rights and local practices. Accordingly, it is by no means contradictory to argue that human rights need to be respected, but different cultures may practice local customs, except those that violate "the right to life, liberty and security of person." As Donnelly notes, "any particular conception ... will have many defensible implementations."

Human rights in international law: towards international-legal universality

The above tensions and debates should not, however, distract us from remembering that an overwhelming number of states have [ratified numerous human rights treaties](#). However, when considering human rights from an international law perspective, it is nevertheless important to bear in mind the structure of the international legal system. International law mainly flows from states. State-based actors decide whether or not to ratify and adhere to a particular treaty. Fair enough, but after ratifying assorted treaties why do states continue to commit widespread human rights violations?

One possible explanation turns on what a state is able to do versus what it is willing to do. In the first case, the governmental and social institutions a state relies upon may be just too weak to enforce human rights law. In the second case, governments have ugly agendas, to include ethnic cleansing, that trump complying with their own treaty obligations. States often get away with such aberrant behavior, of course, because global governance and justice remain a patchwork of initiatives rather than a unified system. The exceptions to the general rule concern humanitarian intervention and bodies such as the International Criminal Court, which become active only in the most egregious cases of systematic and widespread human rights violations. This truth then begs a final question – as cosmopolitans and communitarians continue to define an agreed-upon space between them, is the episodic or "boutiqued" implementation of human rights a better way to go about doing things rather than reaching for the broad, epic sweep of universal agreements and protocols? As with everything else about this subject, opinions differ.

Recommended Reading

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Editor's note:

For the rest of our content on ""Laying the Groundwork: The Definition, Scope and Roles of Human Rights," check out our [dossier](#) on the topic.

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