

Lia-Alexandra BALTADOR
“Lucian Blaga” University of Sibiu

HOW UNIVERSAL ARE THE UNIVERSAL HUMAN RIGHTS TODAY?

Literature
Review

Keywords

Human Rights,
Legitimacy,
Universality

JEL Classification

K38

Abstract

This paper aims to contribute to a constructive debate on human rights. The two World Wars of the last century brought about the creation of the United Nations aimed “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Only three years later the Universal Declaration of the Human Rights was elaborated and promoted by the UN, considered to be the foundation of international human rights law. Today, as globalization brings all closer together in a “global village”, one can see that there are many ways to perceive and guarantee human rights, in different states, but also within different states. Poverty, illiteracy, censorship, cruel treatment and even the lack of guarantee for the right to life are, unfortunately, the norm for many people of the world. Such observations bring up questions regarding the legitimacy, universality and coherence of human rights.

INTRODUCTION

The research area of this paper concentrates on human rights, considered to provide common standards of achievement, which allow human beings to preserve their dignity. In order to be able to provide an in-depth discussion about human rights and the universality or relativity of the same, it is important to explain these notions. So, what are human rights? According to the United Nations “human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible” (UNDHR, 1948).

The Universal Declaration of Human Rights, together with the International Covenant on Civil and Political Rights (1966) and its two Optional Protocols (Optional Protocol to the International Covenant on Civil and Political Rights and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty), and the International Covenant on Economic, Social and Cultural Rights, form the so - called International Bill of Human Rights. The International Bill of Human Rights represents “a milestone in the history of human rights, a veritable *Magna Carta* marking mankind's arrival at a vitally important phase: the conscious acquisition of human dignity and worth” (UN, 1996). Other universal instruments with regards to human rights relate to World Conference On Human Rights And Millennium Assembly, Rights Of Indigenous Peoples And Minorities, Prevention Of Discrimination, Rights Of The Child, Human Rights In The Administration Of Justice: Protection Of Persons Subjected To Detention Or Imprisonment, Social Welfare, Progress And Development, Slavery, Slavery-Like Practices And Forced Labour, Nationality, Statelessness, Asylum And Refugees and others.

This research paper aims to qualitatively revisit the existing arguments related to the legitimacy of human rights. Legitimacy of human rights would conclude that they are recognized and accepted as right and proper by all. Additionally, it will analyze the extent to which these rights can claim their universality, as the different values, inherent to diverse cultural backgrounds in the world, might require a more relative approach and, if so, what are further challenges. Finally, another question arises: if legitimate and universal, why are the world's states showing such poor results in guaranteeing and applying them?

A FUNDAMENTAL QUESTION – ARE HUMAN RIGHTS LEGITIMATE?

According to the UN's definition, human rights appear to be based entirely on our belonging to the homo sapiens species. If one considers the human rights as intrinsic to people, an excursion in history seems appropriate. The Cyrus Cylinder is a 6th century BC clay object inscribed with an account in cuneiform of the conquest of Babylon by the Persian king Cyrus the Great. It's considered to be one of the first bill of human rights as it appears to encourage freedom of worship throughout the Persian Empire and to allow deported people to return to their homelands (McGregor, 2006). It is valued by people all around the world as a symbol of tolerance and respect for different peoples and different faiths, so much so that a copy of the cylinder is on display in the United Nations building in New York.

In the Philosophy of the West we can find since antiquity thoughts on what rights and obligation (some) people should have. In Plato's approach, the perfect State, if rightly ordered on natural law (that is, law derived from the essence of the human being) “is therefore wise and valiant and temperate and just.” (Plato, 380 B.C). *Politeia*, understood as an organization form, a constitution of a(n) (ideal) state, should be based on the Principle of Oikeiopraxia, a sort of specialization of everyone, able to insure *justice*, “admitted to be having and doing what is a man's own, and belongs to him” (Plato, 380 B.C). The edifice of his thoughts fundamentals on ideas of positive rights (that is, rights established by people, and, as such, legitimized) and natural law, which should explain the inequalities between people. So, although the antiquity in the West brings about some progress with regard of rights, it is still only for some people, as slaves didn't benefit from the same rights.

In the time of Judaism and early Christianity people are considered to be created in God's image and likeness. On this ground all people are, in principle, equal and free. Important for the idea of universal human right is the axiom of Liberty, considered to be a fix point of spiritual humanism. God gave the human being the capacity to create the future, to transform the un-determined into self-determined, through the Free Will, whereas all other changes in nature were the result of some outside force acting on whatever it is that undergoes change. According to Pico della Mirandola, this is “the real Substance of Men, on which human dignity relies” (Mirandola, 1990).

Thomas Hobbes is another scholar who asserts on the subject. Even though he doesn't challenge the absolute power of a Sovereign, he explains the source of its power as coming from men, from the people. In Hobbes's conception, people are not

naturally social, but rather egoistic and individualistic. But, because people are equal in power and needs and because of scarcity, they overcome the “state of nature”, “where every man is enemy to every man” (Hobbes, 1651). The “Leviathan” (Commonwealth or state) is artificially constructed through the willingness of men to relinquish natural rights for societal rights, in order to ensure the security “for whose protection and defense it was intended” (Hobbes, 1651).

The idea undergoes a shift in the sense that the human rights are not depending on time or place. John Locke and Jean Jacques Rousseau develop the idea of social contract. According to Locke, the State of Nature, the natural condition of mankind, is a state of perfect and complete liberty to conduct one's life as one best sees fit, free from the interference of others. It is pre-political, but it is not pre-moral, as people are being bound by the law of nature not to harm others. The justification of the authority of the executive component of government is the protection of the people's property and well-being, so when such protection is no longer present, they have a right to resist authority, and, by doing so, to dissolve the social compact (Friend, 2008). Freedom is understood to be substantial and individual, allowing the free development of personality, thoughts and dignity of all people, before any authority or political community (Di Fabio, 2008).

Legitimacy is a value whereby something or someone is recognized and accepted as right and proper. In political science, legitimacy usually is understood as the popular acceptance and recognition by the public of the authority of a governing régime, whereby authority has political power through consent and mutual understandings, not coercion. There are however also different approaches to the subject, which criticizes the intellectual edifice of born human rights. Nobel laureate Amartya Sen suggests that “human beings in nature are, in this view, not more born with human rights, than they're born fully clothed” (Sen, 1999). He argues that there is legitimacy critique to be made, going back to Karl Marx and Jeremy Bentham, as these rights seem to have no standing: the principles are pre-legal, but their consequences rely on the entitlements authorized by the state, understood as a repository of claims and immunities. In other words, just through legislation can these rights be acquired and thus, they have a rather instrumental value than a fundamental one. Still, he further argues that human rights have a standing base if one considers them as requirements based on accepted ethical principles, as goals to be achieved and not as means. In other words “keeping this Declaration constantly in mind, to the end that every individual and every organ of society shall strive by teaching and education to promote respect for these rights and

freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction” (UNDHR, 1948)

UNIVERSAL HUMAN RIGHTS?

In today's globalized world people seem to adopt similar behaviors and lifestyles. There are common practices, consisting of symbols, heroes and rituals (Hofstede, 2010) that seem to be universal acknowledged as desirable, worldwide. What about values, known to be more stable and not so easily replaced? Human rights reside on values and those seem to remain different to each cultural context, over a considerable longer periods. According to the text of the Universal Declaration Of Human Rights, it aims to represent “a common standard of achievement for all peoples and all nations” (UNDHR, 1948).

Regional emerging powers seem not to be willing to accept the Western “spiritual colonization”, imposed by U.N.'s Universal Declaration of Human Rights. “One cannot talk about the universality of human rights and be silent about their cultural dependencies” (Di Fabio, 2008). It's the case of African, Asian or Arabic attempt to adapt human rights on the different set of values, according to their cultural context. The most clear embodiment of this challenge are Asian values, where leaders and academics pointed to an alternative, more authoritative standard of rights, stemming from Asian conservative cultural values (Freeman, 2008). Another example is the Arabic Charta which is very collectivistic and relies heavily on tradition, while emphasizing religious references and the primacy of Sharia law. Some scholars came with a taxonomy of human rights, considering that there is a core of elementary human rights that need no cultural adaptation. These refer to those rights that represent a premises of an individual, who can develop its personality according to his free will. They include “inherent human rights, such as the right to life, liberty and security of person, freedom of movement within one state, freedom of thought, conscience and religion, freedom of opinion and expression, the right to own property, entitlement in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him, entitlement without any discrimination to equal protection of the law the right to freedom of peaceful assembly and association and political participation” (Tönnies, 2008). Every political legitimized authority has to create the necessary infrastructure and the practical premises to ensure

these rights, while, at the same time, allow culturally dependent and collective, deliberative established rights to be developed.

Although developed in the western world, the universality of human rights can be asserted. According to Heiner Bielefeldt, “the universality of human rights resides in the fact that they have the origin in a collective experience of injustice, suppression and pain, common to all men” (Bielefeldt, 2010). In other words, as the Nigerian Nobel Laureate for Literature explained in an interview: “That’s not right: for me the human rights do not represent western values, humanity is not a privilege of the west. Maybe there the thoughts have been better articulated and written down in many books. But any old culture of Africa has structures that aim to control the abuse of power. Sometimes this regulation happen through traditional rituals, elsewhere they have fine political regulatory systems – everything is possible! This is why I don’t accept the statement that we took over “western values”. We adhere to our own values“ (Wernicke, 1997). Friedrich von Schiller has an even more poetic take on the subject, in his *William Tell*:

“Nay, there are bounds unto oppression’s power;
For when its victim nowhere finds redress,
And when his burden may no more be borne,
With hopeful courage he appeals to Heaven,
And grasps from thence his everlasting rights,
Which still inalienable hang on high,
Inviolable as the stars themselves.” (Schiller, 1804)

HUMAN RIGHTS IN PRACTICE

A superficial data analysis is enough to indicate that even if one accepts the legitimacy of Universal Human Rights, there are issues regarding the consistency of applying them. Amnesty International, the world largest human rights defenders is a global movement of more than 7 million people. Its assumed mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic. Amnesty International is independent of any government, political ideology, economic interest or religion.

The last report developed by Amnesty International for 2015/16 indicates the state of human rights in 160 countries and territories of the world. Several issue are being assessed, but the prevalent focus relies on “the unprecedented global number of refugees, migrants and internally displaced people” (Amnesty International, 2015/16). Armed conflicts continued in countries including Syria, Afghanistan, Iraq, Libya, Israel and the Occupied Palestinian Territories, Ukraine, Pakistan and Yemen. “Across several borders, IS displayed a gross disregard for civilian lives, forcing thousands

to flee. In Africa, state and non-state actors committed serious violations and abuses of human rights in Burundi, Cameroon, Central African Republic, northeastern Nigeria, Somalia and South Sudan, including in some cases attacks directed at civilians and civilian infrastructure” (Amnesty International, 2015/16). In South America violence continued to subvert human rights and institutions in countries including Brazil, Mexico and Venezuela, even though there are some positive developments in Colombia.

This report also focuses on the extent by which the international system of law and institutions are adequate for the task of protecting human rights. The report suggests that “the states must protect the system itself. This must include voluntary restraint in the UN Security Council members’ use of the veto in situations of mass atrocity crimes; effective implementation of human rights norms across all instruments of international human rights law; respect for international humanitarian law; refraining from actions that undermine human rights systems, including attacks against or withdrawal of support from them; and alignment of regional human rights mechanisms with the universal standards of the international system” (Amnesty International, 2015/16). Another important factor that has lead to perturbations and crises are “resentments and conflicts that often follow the brutal crushing of dissent by states, or when states repress that enduring quest of every person to live in dignity with their rights upheld”.

During the period analyzed in this report there were many situation in which authorities “repressed freedom of expression online and cracked down on dissenters using a range of tools, including arbitrary arrests and detentions, torture and other ill-treatment, and the death penalty. Today, states’ continuing development of new methods of repression to keep abreast of advancing technology and connectivity is a major threat to freedom of expression” (Amnesty International, 2015/16).

António Guterres, UN’s High Commissioner for Refugees has a dismall conclusion “The fact that we are seeing so many new crises breaking out without any of the old ones getting resolved, clearly illustrates the lack of capacity and political will to end conflict, let alone to prevent it. The result is an alarming proliferation of unpredictability and impunity”.

Still, some progress can be indicated, as well. The presence of human rights and accountability elements in the UN Sustainable Development Goals; action in May to prevent forced evictions on the Regional Mombasa Port Access Road project in Kenya; and the release of Filep Karma, a Papuan prisoner of conscience in Indonesia, as a result of 65,000 messages written on his behalf by supporters from around the world and the Special Rapporteur on the right to privacy in the digital

age, mandated by the UN. The European Union explicitly assumed a major role in promoting and guaranteeing human rights within the Treaty of Lisbon. The priorities established by Jean –Claude Juncker’s European Commission bring this objective closer. According to the State of the Union 2016, “EU citizens now enjoy better access to justice as the Parliament and Council have passed legislation on the presumption of innocence and on safeguards for children in criminal proceedings” (State of the Union, 2016). More than 15 billion Euros from the EU’s Budget mobilized in response to the refugee crises and migration policy “ensures solidarity and fair sharing of responsibilities”. Until now over 13000 people have been relocated or resettled since September 2015 and the reform of the European asylum system will ensure “a more humane, fair, coherent and efficient common policy” (State of the Union, 2016). The EU provides more than half of worldwide official development aid, reaching 68 billion Euros and remains the world’s largest donor of assistance.

CONCLUSIONS

This paper aimed to bring some clarification with regards to three important aspects of human rights, namely their legitimacy, universality and the extent of their guarantee and implementation in today’s reality.

Are the rights included in the Universal Declaration of the Human Rights recognized and accepted as right and proper by everyone? The principles are pre-legal, but their consequences rely on the entitlements authorized by the state. In other words, just through legislation can these rights be acquired and thus, they have a rather instrumental value than a fundamental one. But if one considers them as requirements based on accepted ethical principles, as goals to be achieved and not as means, they regain value.

In this diverse world, brought closer together by globalization can one speak about “universal” Human Rights, which resonate with the values of all nations? Relativistic approaches would take into account the differences of certain cultures concerning acceptable values and norms. But if one accepts that each set of values might differ more or less from the “universal” one, it might weaken even more the process of assessment and fight against the violation of the different sets of human rights. A more pragmatic approach would be to consider that “humanity is not a privilege of the West”.

The current state of human rights developed by Amnesty International is indicating that there are serious issues to be addressed. Many conflict areas, refugee crises and terrorism contribute to an overall feeling of unpredictability and impunity. Such

problems can be tackled, but it requires commitment and cooperation between all states, the allocation of sufficient funds and resources and last, but not least exert an open mind and heart.

REFERENCES

- [1] Amnesty International. *Annual Report 2015/2016*. Retrieved from <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>
- [2] Bielefeld, H., (2010). *The Prohibition on Discrimination: A Founding Principle of Human Rights*. in Human Rights History. Retrieved from http://www.stiftung-evz.de/fileadmin/user_upload/EVZ_Uploads/Handlungsfelder/Handeln_fuer_Menschenrechte/Menschen_Rechte_Bilden/20130820_evz_public_mrb_web.pdf
- [3] Di Fabio, . (2008). *Menschenrechte in unterschiedlichen Kulturräumen*. in Nooke, G., Lohmann, G., Wahlers, G. (2008), *Gelten Menschenrechte universal? Begründungen und Infragestellungen*. Retrieved from http://www.kas.de/upload/dokumente/verlagspublikationen/Menschenrechte/menschenrechte_fabio.pdf
- [4] European Commission. State of the Union 2016. Retrieved from https://ec.europa.eu/priorities/state-union-2016_en
- [5] Freeman, M (2008), *Human Rights*. In: P. Burnell & V. Randall, ed. (2008), *Politics in the Developing World*, Oxford: Oxford University Press. Ch. 18
- [6] Friend, C. (1995). *Social Contract Theory*. Retrieved from The Internet Encyclopedia of Philosophy. <http://www.iep.utm.edu/soc-cont/>
- [7] Hobbes, T. (1651). *Leviathan or The Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil*, p.78 Andrew Crooke, at the Green Dragon
- [8] Hofstede, G., Hofstede G.J., Minkov, M. (2010). *Culturi si organizatii*. Humanitas Publication. Bucharest
- [9] MacGregor, N., (2006). *The whole world in our hands*, in *Art and Cultural Heritage: Law, Policy, and Practice*, p. 383–4, ed. Barbara T. Hoffman. Cambridge University Press
- [10] Miranda, G. Pico della, (1990). *Oratio de hominis dignitate. Über die Würde des Menschen (lat.-deutsch)*, p. 5-12. Retrieved from <http://bactra.org/Mirandola/>
- [11] Plato (380 BC). *The Republic*. Retrieved from <http://classics.mit.edu/Plato/republic.mb.txt>
- [12] Sen, A. (1999). *Human Rights and Consequences*. Kenan Institute for Ethics - Speeches & Panels. Retrieved from

- <https://www.youtube.com/watch?v=-AlUqIqzL4o&t=1436s>
- [13] Schiller, Fr.v.(1804). *William Tell*. Retrieved from <https://archive.org/stream/williamtelltrans00sc-hiuoft#page/70/mode/2up/search/Act+II>
- [14] Tönnies, S. (2008). *Universalität der Menschenrechte* in Nooke, G., Lohmann, G., Wahlers, G. (2008), *Gelten Menschenrechte universal? Begründungen und Infragestellungen*. Retrieved from http://www.kas.de/upload/dokumente/verlagspublikationen/Menschenrechte/menschenrechte_toennies.pdf
- [15] United Nations. (1996). *The International Bill of Human Rights*. Retrieved from <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>
- [16] United Nations. (1948). *Universal Declaration of Human Rights*. Retrieved from <http://www.un.org/en/universal-declaration-human-rights/>
- [17] Wernicke, C. (1997). *Schluß mit der doppelten Moral. Ein ZEITGespräch mit Sole Woyinka*, Die ZEIT 1997 (13)