Human Rights
A Cross-Cultural Conception

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Abstract

On examining the political theories of John Rawls and Charles Beitz, this paper is a product of the perceived disparities between the idealism of human rights theory and the socio-political failures of the real-time human rights corpus. With both theorists serving as the moral and theoretical foundations of the discourse, the loci of their arguments will be presented and dissected in light of contemporary political attitudes. This paper aims to scrutinise the human rights discourse through the lens I believe to be its most damaging: cultural pluralism and a simultaneous tendency toward (neo)-imperialist attitudes. Moreover, with the current literature failing to provide adequately constructive answers, I have endeavoured to present a compelling commentary on where I believe the necessitating changes lie culturally, attitudinally, and politically. In preserving and upholding the Universal Declaration of Human Rights as a productive and morally beneficial basis on which to ground this commentary, this paper assumes 'human rights' to refer to the articles enshrined in this United Nations' document. This conception and the attitudes and actions surrounding it have nonetheless incurred significant and warranted criticism, consideration of which prompted the proposed conception that human rights be defined politically as rights to choose.

Introduction

The competing cultural perspectives, values, and norms that are inherent worldwide inevitably undermine the project of universalising standards of human rights. Hereby understood as Articles 1 to 29 of the United Nations' Universal Declaration of Human Rights, this paper aims to scrutinise this 'contemporary' conception of human rights as a potential standard of legitimacy for all political societies. More succinctly, it will be argued that human rights should be considered a legitimate moral standard in the twenty-first century. Yet, in order to be so, their conception must metamorphose, shaking off the detrimental attitudes and self-interested actions that it has historically been associated with. These attitudes and their corresponding actions will be fully outlined with reference to the work of Kenyan-American legal professor Makau Mutua.

The single greatest castigation against the current human rights doctrine lies in its failure to acknowledge and its inability to accommodate the fact of 'cultural pluralism'. Definitions of cultural pluralism vary between the descriptive and the prescriptive; the former refers to the

distinct multiplicity of cultures the world now boasts, whereas the latter advocates for the capacity of minorities to participate fully in dominant society while at the same time preserving their cultural differences. The charge of the descriptive account against the human rights discourse will be represented by Mutua's arguments in the ensuing sections. As we reconstruct the human rights discourse, attention must be paid to the dangers of ethnocentricity: the belief in the superiority of one's own cultural heritage and its accompanying traditions. Nonetheless, Islamic legal scholar Abdullahi An-Na'im is astute in his assertion that the perceived challenge of cultural relativism should neither be underestimated, nor found to be absolute in its denial of human rights as a standard of legitimacy (An-Na'im 1995, 3). A constructive balance between cultural pluralism and the theoretical universalisation of human rights will therefore be pursued. In this way, this paper will advocate for a political conception of rights similar to that of Beitz: acknowledging the instrumental role of human rights in politics while at the same time recognising their differing value across cultures.

Firstly, this paper will present both Charles Beitz and John Rawls' political conceptions of human rights; arguing that human rights *should* be a standard of legitimacy for *all* political societies. Secondly, through exposing the controversies within the current discourse regarding culturally imperialist philosophies, Western-centric ideals, and institutionalised power differentials, this paper argues for a universally legitimate conception of human rights that is both political and cross-cultural. Although not enough weight is currently given to the negation of non-Western cultural norms in the doctrine of human rights, it will be argued that considerations of the very presence of cultural pluralism are not, in and of themselves, significantly damaging enough to the discourse that they warrant the limiting of its scope or legitimacy. The negation of these non-Western norms must nonetheless be sincerely addressed. It must be acknowledged that norms have always required a dynamic process of redefinition, and human rights must be accorded the same constant reformulation in order to gain *and* maintain legitimacy. Whilst the incompatibility of certain rights is not denied, the project of this paper is to formulate a constructive approach that will provide a cross-cultural basis of legitimacy for human rights.

A Standard of Legitimacy for All Societies

Human rights are norms that recognise the intrinsic worth and dignity of individuals, and consequently aim at the protection of their legal, political, and social abilities (United Nations 1948). In so doing,

most human rights impose duties on their addressees, whether positive or negative. These rights coexist and are applied universally. Notably, this universality does not necessitate global *or* individual acceptance: "human rights are supposed to be universal in the sense that they apply to or may be claimed by everyone" (Beitz 2001, 274). They exist independent of law and cultural practices and have come to prevail as a standard of assessment, evaluation, and criticism of institutions both domestically and internationally (Beitz 2001, 264). Nonetheless, increasingly human rights have been abused as a tool of foreign policy, devastating their global legitimacy. We need only look to the speeches of US President George W. Bush on Iraq in the aftermath of 9/11—particularly the proclamation made on Human Rights Day, 2001—to evince the ways in which human rights have been cited to garner public support for interventionist policy motivated by a plethora of other, concealed, factors (Bush 2001). Often serving a purely instrumental political function, the guise of human rights has been employed to protect national interests, 'justifying' deterrent or coercive foreign policy such as economic sanctions or military intervention (Nickel 2014). This epidemic has been rife in various cases in the Middle East, for example, a region that has suffered from third party interventionism since long before the Arab Spring.

On the Rejection of Natural Rights

The foundations of human rights are subject to debate; there are those that believe in natural rights, whether God-given or secular, those that refer to a minimal denominator of rights that are consistent in every society, and those that conceive of human rights in terms of the purely political (Nickel 2014). While the US Declaration of Independence of the eighteenth century historically enshrined the God-given rights to life, liberty, and happiness, twenty-first century proponents of Islamic schools of thought have criticised the United Nations' human rights doctrines for failing to be adequately derived from divine authority (Currier 1841). As an inherently ethical entity, human rights transcend to the core of moral laws, making the corpus vulnerable to debate on both their content and derivation. In this way, religion is a parochial arena in which the possibility of universality is inherently hampered. The project of the human rights discourse must not be to intervene in the practices of such religions, yet it must also avoid exacerbating or creating cleavages between them. The natural or divine basis of human rights is hereby rejected.

On the Affirmation of Political Rights

John Rawls proposed a political conception of human rights in *The Law of Peoples* and understood the nature and justification of human rights in light of their political roles in international relations. For Rawls, human rights are a special class of *urgent* rights that would be satisfied by any 'decent' society: freedom from slavery, freedom of conscience, and freedom from genocide (Rawls 1999, 79). These rights are defined by their roles in determining the normative obligations of the international community; their fulfilment is a necessary condition of the society's political institutions, and it determines the justification for forceful intervention or economic sanctions (80). Moreover, Rawls conceives of these human rights as "binding on all peoples and societies, including outlaw states" (80-81). With this conception, Rawls succeeds both in creating a list that is non-parochial (and therefore attractive to countries outside of the scope of liberal democracy) and evading the justification of intervention on the grounds of weaker, or more 'controversial', rights (Nickel 2014).

Charles Beitz too advances a political, yet also teleological, conception of human rights. However, he disagrees with Rawls' view that the political roles of human rights necessitate such an abbreviated list of rights themselves. Instrumentally, Beitz acknowledges that human rights are often used to determine eligibility to economic or development programs, as standards of monitoring for nongovernmental organizations, or to intervene in domestic affairs (Beitz 2001, 269). Such measures can constitute "a kind of postcolonial imperialism", wherein persevering colonial attitudes of domination and hierarchy continue to permeate structurally in international socio-economic institutions and discriminatory systems of global governance (270). These measures thus need to be balanced normatively against an understanding of their potentially detrimental global socio-political and economic implications. Nevertheless, while Beitz recognises the pertinent ideological critique that cultural pluralism presents, he considers it to be an insufficient justification for limiting the scope of a plausible doctrine of international human rights (270). For Beitz, a legitimate doctrine of human rights should be capable of three kinds of roles: constraining domestic constitutions and international organisations, describing contemporary goals for social development, and forming grounds for political criticism and appeals to global political actors (277). Therefore, he settles on a doctrine of human rights that is 'common' to all reasonable persons and their corresponding conceptions of the good. In this way, he argues that the culturally and politically non-partisan nature of the human rights

doctrine does not illegitimate it—there is broader scope and utility to the doctrine in the political realm.

A Contemporary Standard of Human Rights

The Kenyan-American legal scholar Makau Mutua identifies five salient critiques of the current human rights discourse that significantly hinder its international legitimacy. Firstly, he correctly argues that the human rights corpus is fundamentally Eurocentric; recasting states into their historically colonial positions of superiority and subordination (Mutua 2001, 204). In so doing, it overlooks both important non-Western struggles in the human rights movement, and non-Western norms themselves, an observation Mutua could make first-hand as the founder and chair of the Kenya Human Rights Commission. Secondly, his three-dimensional Savages-Victims-Saviors metaphor demonstrates the construction of a dichotomy between the Western 'saviour' and the 'barbarism' or victimisation of Third World practices and people, as well as the lack of cultural cross-contamination and the ideological project of "the transformation by Western cultures of non-Western cultures into a Eurocentric prototype", all exhibited by the canon (Kenyan Human Rights Commission 2016, Mutua 2001, 205). The third and fourth critiques elucidate both the arrogant and biased rhetoric used by the corpus, and the global power differentials it ignores; prompting Mutua to call for a movement that not only addresses its Eurocentrism, but also acknowledges the deeply asymmetrical power relations within cultures, genders, religions, and ethnic groups (Mutua 2001, 206-207). Finally, Mutua believes that his metaphor illuminates the perpetuation of racial connotations by the human rights narrative; they serve as a self-redemption project for privileged white societies to 'civilise' 'inferior' peoples (208).

In light of Mutua's critiques, and the political conceptions advanced by both Rawls and Beitz, this section presents a constructive, dynamic conception of human rights that is simultaneously cross-cultural and political. The above identified problems that have been exhibited by the human rights discourse are not innate in human rights themselves. As political entities, human rights are reflective of real-time politics, and thus necessitate self-criticism and the acknowledgment of the history and rhetoric that shaped them. This history should neither define the doctrine moving forward, nor be the subject of tactful cognitive erasure. Just as Beitz posits that the nuances of cultural pluralism are not sufficient to warrant the limiting of the human rights' corpus and the scope of its powers, I will add that the lack of global legitimacy

accrued by the movement of late (since the aforementioned US foreign policies in the Middle East, for example) indicates a global requirement to accommodate and promote cultural pluralism. It is imperative that the human rights discourse reconsider its binary perspective of Western values and norms, and its corresponding Eurocentrism. I will argue that this be addressed in two critical ways: through the recognition of the dual aspects of the International Bill of Rights as equal in value, and through the incorporation of a more cross-cultural approach to universal norms.

The International Bill of Rights is simply a collective term for the Universal Declaration of Human Rights and two international covenants: The International Covenant on Economic, Social, and Cultural rights, and the International Covenant on Civil and Political Rights (Beitz, 2001, 271). The ideological distinction between *classes* of rights originated in the separation of these two covenants. Historically, whilst the West has focused on political and civil rights, or first-generation rights, non-Western nations have preferred to focus on economic and social second-generation rights – an ideological struggle that dates back to the Cold War (Nickel 2014). Yet, it is important to recognise that human rights are ideologically *indivisible*: civil and political, economic and social rights are interrelated, and therefore theoretically co-equal in importance (United Nations 1948). Post-Cold War Western hegemony has perpetrated the ideological focus on Western ideals, and the corresponding prioritisation of civil and political rights by the international community. This is exemplified starkly in the work of international non-governmental organizations, who's campaigns primarily focus on violations of civil and political rights such as freedom of expression in authoritarian regimes, or gender-based campaigns in religious regions (Mutua 2001, 216). This scrutiny has been seemingly zero-sum in its nature: with the focal point as civil and political abuses, socio-economic violations of human rights are continuously underrepresented in the global court of public opinion. This prioritisation has prompted several of the problematic developments addressed by Mutua: both the impression that the Western human rights record is faultless relative to the perceived Third World 'savages', and that socioeconomic rights are inferior in importance. With this hierarchical ideological distinction persisting between classes of rights, the socioeconomic disparities that are rife in the West—such as gender pay gaps—go unexamined in the face of civil and political violations in, for example, Saudi Arabia. The monopolisation of the human rights discourse by Western states perpetuates and augments these disparities in a self-interested and protectionist manner. For as long as this monopoly is allowed to persevere, Western states will be

(self)-accredited a distorted abundance of global legitimacy regarding human rights—at the expense of both this same legitimacy for non-Western states, and for the discourse itself.

Rawls' minimal list of human rights 'proper' neglects many fundamental freedoms that we consider imperative today—taking into consideration only Articles 3 to 18 of the Universal Declaration of Human Rights. Since Articles 1 to 19 are civil and political rights and Articles 20 to 29 are socio-economic rights, Rawls' conception of human rights 'proper' perpetuates this Western prioritisation of liberal values. For Rawls, human rights are 'common' to all *decent* societies—those non-liberal societies whose basic institutions and beliefs meet his specific conditions of political rights and justice—yet, his application of these human rights extends even to outlawed states (Rawls 1999, 80). With this extended applicability of prescribed civil-political rights to non-liberal societies, it becomes evident that Rawlsian intervention to protect human rights could not always be consistent with the conventional moralities of the concerned societies (Rawls 1999, 79-81; Beitz 2001, 275). This, compounded with his prioritisation of (Western) human rights 'proper', highlights the capacity for Rawls' conception of human rights to justify political intervention on the grounds of violation of political and civil rights, but not for socio-economic rights—a disparity that encourages abusive intervention and, therefore, the illegitimacy of the discourse.

It is undeniable that civil and political rights are non-neutral, in the sense that they are not endorsed by all political moralities in the world; yet, to invalidate civil and political rights on account of their emergence from Western philosophy would be to commit a genetic fallacy (Beitz 2001, 278). Similarly, the subordination of socio-economic rights by the West does not ascertain their value (or lack thereof). That is to say, although the various perceptions of human rights are problematic for legitimacy, they are not pragmatically irreconcilable. In order for human rights to be considered a standard of legitimacy for *all* political communities, these two branches of the human rights corpus must be equally valued in international relations. The West frequently violates rights too; the shift in focus towards a more balanced analysis of international human rights abuses in this regard would therefore prevent the discourse from emphasising solely Third World abuses—a step away from the implications of Eurocentrism discussed by Mutua.

Beitz asserts that "the doctrine of human rights is a political construction intended for certain political purposes and is to be understood against the background of [...] the contemporary international

environment" (276). Yet, the current conception of human rights does not accurately reflect the contemporary international community—the most salient reason for its legitimacy deficit. Abdullahi An-Na'im emphasises the inextricable influence of culture on an individual's moral compass: "culture is a primary force in the socialisation of individuals and a major determinant of the consciousness and experience of the community" (An-Na'im 1995, 23). That is to say, the legitimacy deficit currently plaguing the human rights discourse is better understood in light of the innate value attributed to the cultural compass. Without an alignment of broader cultural values to those reflected in the discourse, the corpus cannot expect to gain traction. As such, cultural sanctioning of normative propositions is indispensable in enhancing the legitimacy of human rights standards (20). Beitz too acknowledges that "the idea of a right is itself culturally specific" (Beitz 2001, 273). Consequently, human rights standards continue to boast significantly more legitimacy in the West, by virtue of their formulation in the works of Western philosophers such as John Rawls, and specifically Eurocentric norms.

It is critical to recognise that a paradox exists in the characteristics of culture; between the necessity of cultural stability and the dynamic of continuous change (An-Na'im 1995, 27). Cultural changes are induced by both internal influences—such as movements prompted by 'norm entrepreneurs'—and external influences, accelerated by processes such as globalisation. In order for these adjustments to be 'natural', they must occur through culturally approved mechanisms, pre-existing norms, and the relevant institutions (27). The problems inherent to (neo)colonialism were that the majority of cultural changes were neither natural, nor legitimately approved and internalised—they were impositions. Furthermore, just as political societies are not homogenous, cultural norms are ambivalent and susceptible to different interpretations. Therefore, in order for human rights to be considered a legitimate standard across *all* political societies, the process of their internalisation as norms cannot be forced: a grant that intervention is directly detrimental towards.

To demonstrate the practicalities of this argument, let us take the controversial example of female genital mutilation (FGM). Western rhetoric of 'mutilation' and 'savagery' has urged the international community to condemn the cultural practice; yet it is sustained by cultural acceptance. Nevertheless, the relevance of discussing the dynamism and importance of cultural internalisation lies in the stark rejection of cultural imperialist attitudes in favour of a multilateral approach to human rights. Practically, this entails upholding cultural

values and emphasising *choice*. The right to political participation—to vote—does not necessitate that we actually participate: a right is not a requirement, but rather the protection of an individual's capacities. Correspondingly, a girl must have the right to *choose;* whether to assert her right, or participate in her cultural practice. The human rights corpus must therefore actively facilitate and empower an individual's capacity to choose, whilst not intervening in the decision itself. In *Gender Trouble* (1990), Judith Butler similarly argues that the content of various societal gender norms is always dynamically evolving (Butler 2008, 62). This culminates in the notion of norm 'resignification': the constant alteration of norms through societal acts and individual choices (63). One girl's capacity to choose to act on her human right to prevent her own genital mutilation contributes to this norm evolution, yet her choice must be allowed to take place in the absence of the scrutinising burden that the human rights doctrine and its moral prescriptions currently impose on non-Western practices.

At the same time, the political value of the different classes of rights needs to be balanced. Multilateral institutions will protect the legitimacy of the human rights doctrine through preventing its unilateral abuse by Western liberal powers. It is evident that culture and human rights are institutions that evolve dynamically over time, thus in order for these institutions to evolve simultaneously and equally, the system *must* adjust to formally represent the *contemporary* international environment. A withdrawal from the politics of humanitarian intervention and cultural imposition is required. The human rights doctrine will only reflect the contemporary cultural composition of the international sphere when it can acknowledge both its origins, and the consequent necessary prohibition on asserting moral prescriptions. A human right must be understood as one's ability to *claim* their right and be supported in doing so—through education, material and psychological support—not as a universal, enforceable *prescription* for how one *should* act.[1]

Conclusion

This paper has argued that the United Nations' political conception of human rights *should* be a standard of legitimacy for all political societies in the contemporary world. Yet, on scrutinising the frustrations of the United Nations' human rights corpus through discussion of manipulation, intervention, and neo-colonial tendencies, it is evident that the contradiction between ideal theory and its practical application

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[1] Yes, this assumes the atomistic (primarily Western) perception of human rights as individualistic—a distinction that lies outside of the scope of this paper in terms of justification.

has been so severely manipulated that both have now been jeopardised. A political conception avoids the parochialism of religion, recognising that by virtue of their role in public ethical life, rights are inherently political. Rawls' political conception has been rejected for its insufficiency in protecting the broad range of internationally supported rights, and for its corresponding sustenance of the Western-centric subordination of more socialist rights. Nonetheless, this paper has advocated for a political conception of rights similar to that of Charles Beitz: a conception that acknowledges the role of human rights in politics, but at the same time recognises their differing values across cultures. Yet, Beitz neglects to give a more concrete list of human rights, and to acknowledge that in conceiving rights as common to all 'persons' rather than 'peoples', his Western atomistic perspective is inherent.

Through exploring the inherent influence of culture on norms and their legitimacy, it has become apparent that for a conception of human rights to be regarded as legitimate for *all* political societies, it must be internalised naturally, not through coercive employment or diplomatic incentives. Consequently, the human rights corpus should focus on the means through which human rights claims—such as in the case of FGM—can be upheld once they are made, rather than their forced implementation. At the same time, it is imperative that the ideological monopolisation over the human rights narrative by the West be countered through effective balancing—of the International Bill of Rights and multilateral institutions—in order to more accurately represent the contemporary international environment. Human rights must be understood as the facilitation of choice, not the prescription of the outcome of an inherently socio-political or moral decision.

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