

## **Are Human Rights Universal?**

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### **Introduction**

In this essay, I will argue that "human rights are not universal" by analyzing the human rights discourse and the narratives that control it. Challenging the claim of universality will be highlighted from three different angles. First, the essay argues that the experience of women is often overlooked in the human rights narrative; making it non-inclusive. Furthermore, the second major issue with human rights universality is that such a claim is driven by western liberal thought that has hegemonic agenda instead of universal purposes. Finally, the third dimension that I will focus on in this essay is the strong presence of neoliberal ideas in the human rights discourse which aim at serving the interests of the few elites rather than all people around the globe. Before going into the analysis, I will start by explaining a key term in this essay which is the "universality" of human rights by shedding the light on the context of the Universal Declaration of Human Rights (UDHR).

### **The Universal Declaration of Human Rights**

The modern understanding of human rights, as universal, emerged as a result of war and conflict, most notably WWI and WWII. Although there were many declarations about human rights before UDHR, such as the Bill of Rights, and the Declaration of the Rights of Man and the Citizen, none of them represented the universal values of human rights (Anam 2018:3). Thus, on 1 December 1948, the United Nations (UN) approved the draft of the Universal

Declaration of Human Rights which was proclaimed the General Assembly resolution 217 A (Christensen, 2020:121). The main idea of the UDHR is that all human beings have basic human rights such as the right to life, liberty, security, and equality before the law as well as freedom from fear, torture, and slavery. Recognizing such rights is not on the basis of any status apart from being a human

being. Based on this understanding, the claim of the universality of human rights is based on the idea that it protects the rights of human beings regardless of race, nationality, religion, socio-economic status, gender, or any other difference. Human rights are also related to human dignity which shall not be undermined or humiliated. These rights hence function as the basis for human equality and justice all over the world. As Anam (2020) states, "these rights are granted to all humans purely because they are being human" (3). It is also important to mention that morality and law intersect in the UDHR document. This means that when the domestic legal system fails to prevent human rights abuses, individuals and groups can seek the protection of international law (Anam 2020:4). Therefore, international law guarantees that the universality of human rights is protected by certain legal mechanisms.

However, the universality of human rights is still highly debated by several scholars who state that the UDHR is not as inclusive as universalists promote it. The claims for universality are challenged from different perspectives that highlight the bias of human rights discourses and narratives.

### **The Patriarchal Legacy of Human Rights**

One of the main issues about human rights is that they do not reflect the experience of women. This can be seen in the way women's sufferings are not recorded in human rights history. In this regard, MacKinnon (1993) explains that, unlike men, the injustice inflicted on women, such as rape and torture, are not marked as human suffering. This is because what happens to women is either considered too particular to be universal, too human to be female, or too female to be human (60). The bias in recording women's suffering can be mainly seen when it comes to war rapes. Indeed, rapes in wars tend to be regarded as an "inevitability of armed conflict" rather than an abuse of human rights (65). Mackinnon (1993) concludes that reluctance to record such abuse as part of the human suffering in history stems from the fact that it is "continuation of the hostilities of civil life" that men inflict on women (65). In other words, since rape occurs daily, it is overlooked when it happens in war. The complacency that surrounds women's rights in peacetime extends to war making the violations against them less likely to be considered violations against human rights. Therefore, human rights and international law only reflect the experience of men as they are the ones whose suffering is considered "human". Mackinnon (1993) concludes that "If you are hurt as a member of a group, the odds that the group will be considered human are improved if it includes men" (68). In this way, the basic foundation of human rights universality is fragile because it perceives women, or "half of humanity" as Mackinnon (1933) describes it, as rightsless subhuman creatures whose experiences are not considered as important as men in the international legal space (61).

Nevertheless, some critics argue that there have been some considerable steps within the international legal space of human rights to protect women. Those who advocate the universality of human rights claim that it has been attained through the ongoing process and struggles of the women's rights movement which managed to secure women's rights in different areas across the world. In this regard, Jayti et al (2010) state that the women's rights movement "led to all kinds of action in crucial areas of concern, such as violence, health, environment, community development, media" and that "all kinds of efforts were made to increase awareness about women's rights" (20). For instance, the 1993 Declaration on the Elimination of Violence against Women is a turning point in the history of human rights as it is the first international instrument that has explicitly addressed violence against women. It is also argued

that the declaration has been written in broad terms so that they can be applied in different contexts (Jayti et al 2010:22). However, Bovarnick (2007) sheds the light on the weaknesses of the Declaration on the Elimination of Violence against Women by arguing that it is inapplicable in non-western contexts. First of all, Bovarnick (2007) sheds the light on the western nature of human rights, which is an idea that I will further elaborate in more details in the following section. In a nutshell, Bovarnick (2007) argues that human rights legislation is written in a language of rationalism that reflects its European roots (62). This leads to several problems when it comes to applying the same legislation to non-western communities whose foundations are based on religious rather than secular sources. This means that when it comes to women, the human rights legislation alone cannot protect non-western women. For instance, in several rural communities in Mexico, which strictly abide by Catholicism, "rapto", which is a "marriage between the aggressor and victim", is a customary practice that is encouraged to maintain family honor (Bovarnick 2007:65). In this case, the socio-cultural mechanism, such as the patriarchal customary codes of local communities, turns rape into a practice that can pay off and lead sexual violence to remain deeply rooted in women's lives even when it is not accepted (66). This shows that women's access to the legal system of human rights cannot be merely secured by law. Social customs and patriarchal norms play a critical role in preventing women from claiming their rights which are supposed to be "universal".

### **Universal rights or Western rights?**

In order to test the universality of human rights, it is important to investigate its origins and the narrative ideological discourses that guide it. Such investigation has led many scholars to conclude that human rights narratives are driven by a hegemonic western discourse that aims at imposing a fixed ideological framework which simply does not fit non-western contexts. In this regard, Peterson (1990) draws one's attention to a major paradox in the context of human rights formation. The highly industrialized western nations that hosted the major historical evolution of human rights are the ones who denied them to generations of colonized people (309). This means that the peculiarities of non-western contexts were not taken into consideration during the historical evolution of human rights. Another paradox in human rights narratives was highlighted by Mutua (2002) who points out that the corpus of human rights seeks diversity and difference only under the guidelines of western political democracy which are not negotiable (4). However, Peterson (1990) and Mutua (2002) see the problem of human rights universality from two different perspectives. On the one hand, Peterson (1990) argues that the historical development of human rights in the Western context is strikingly different from the non-western one. In non-western areas, the colonial experience of economic exploitation made human dignity closely tied to economic rights rather than civil or political ones (309). However, human rights theorists in the West assumed that humans are bourgeois by nature and that all people are "individualist maximizers" and "acquisitive and possessive individualists" (311). The differences in perspectives and historical evolutions between the colonizer and the colonized, have led Peterson (1990) to conclude that in the formerly colonized nations "achieving concrete, substantive rights is paramount over the Western preoccupation with formal rights" (310). Therefore, the human rights discourse for universality cannot be achieved without taking into consideration the "historically differing experiences" of non-western societies. On the other hand, Mutua (1990) does not simply state that the human rights discourse ignores the experience of non-western societies but he also continues to argue that the same discourse aims at

exercising western hegemony over other cultures (4). The "unrelenting" western discourse for universality aims at destroying difference by creating a reason to penetrate and intervene in other cultures with the intent of transforming them under the liberal model (5). Such a hegemonic view tries to legitimize intervention under different forms such as military, sanctions, trade, or aid. Moreover, Mutua (2002) argues that the western hegemonic discourse of human rights is guided by a metaphor of the Savage-Victim-Savior (SVS) (10). In this prism, the savage is the state which plays the role of "an ogre forever bent on the consumption of humans" by choking off and ousting civil society (10). The state can only redeem itself once it succumbs to human rights norms. This means that the real savage is not the state itself but rather the cultural foundation of the state which needs to be reformed under the rubrics of liberal democracy of human rights (11). The second dimension of Mutua's metaphor is the victims who are depicted as powerless and helpless after their "naturalist attributes" were negated by the actions of the "state or the cultural foundations of the state" (11). This victim needs the savior, which is the human rights corpus, which promises its victims freedom from the state and culture but most importantly freedom to "create a better society based on particular values". This means that the real savior is the "culturally based norms and practices that inhere in the liberal thought and philosophy" (Mutua 2002:11). In this way, the promise of universality in the human rights discourse does not only ignore key historical differences between the west and non-West (Peterson 1990) but also tries to exercise a western liberal cultural hegemony on other cultures (Mutua 2002).

Proponents of human rights universality have challenged the view that human rights discourse only reflects the experience of the West. For instance, Pollis and Schwab (1979) explain that "all societies cross-culturally and historically manifest conceptions of human rights" (102). These practices were part of the customs and traditional values. The collection of these values presents the backbone of the UDHR which achieved an "overlapping consensus" among all cultures. This claim implies that the UDHR is the fruit of international struggles and values that were adopted in the draft (102). However, Mutua (2002) challenges such a claim by stating that human rights universality is undermined by the Eurocentric colonial project that overlooks the struggles of the colonized. Mutua (2002) explains that many important events that preceded "the post-1945, UN-led human rights movement include the antislavery campaigns in both Africa and the United States, the anticolonial struggles in Africa, Asia, and

Latin America, and the struggles for women's suffrage and equal rights throughout the world" (12). The works of these non-Western activists are not acknowledged by the contemporary human rights movement and are overlooked in the current understanding of human rights. This means that the overlapping consensus outlined by Pollis and Schwab (1979) did not take place between all cultures but it was rather limited to the western context before being forced on other cultures.

### **The Neoliberal discourse of human rights**

The universality of human rights entails that all people are equal regardless of their status (UDHR Article 2). However, O'Connell (2007) challenges such a claim by arguing that one cannot be committed to defending human rights while at the same time being "acquiescent in the dominant model of globalization" (484). From this perspective, human rights cannot be universal because it is driven by the orthodoxy of the neoliberal elites who engage in violating the same rights that they claim to promote. This neoliberal orthodoxy tends to associate the logic of laissez-fair capitalism with improving human

security and welfare and, consequently, protecting human rights. This discourse leads to major problems: First, such an association makes one blind to the fact that several human rights violations are majorly caused by the neoliberal interests that control the global political economy. Second, adopting the capitalist discourse of human rights leads to advocating for the "very authors of massive human rights violations to assisting in ameliorating the worst excesses of their policies" (O'Connell, 2007:488). Therefore, the universality of human rights cannot be achieved as long as its discourse is driven by a neoliberal paradigm that violates the same rights it advocates. In the same way, the neoliberal discourse of human rights is selective in the human rights it promotes. For instance, the neoliberal elites strive to promote a limited set of civil or political rights such as freedom of individual action, non-interference in the private world of economics, and the rights and most important the principles of laissez-fair and free trade because these rights secure a free market out of social and political control. However, the same discourse overlooks the rights that promote "freedom of the masses" such as the right to housing and healthcare for everyone because such rights do not serve the interests of the neoliberal elites (494). In the same context, Nash (2019) adjusts O'Connell's analysis by arguing that the neoliberal discourse of human rights does not aim at freeing individuals from the state but rather aims at reconstructing the state. Indeed, it is misleading to claim that human rights and neoliberalism are simply "antistate" because both need the state to realize the human rights values and to secure the neoliberal policies. Therefore, "zooming in closer on projects that have aimed to realize human rights and neoliberal ideals in practice, it is clear that they involve rather restructuring states" (Nash 2019:495). Another similarity between human rights and neoliberal discourses traced by Nash (2019) is that while human rights stress on denouncing politics as potentially dangerous to higher moral principles, the neoliberal rhetoric also promotes markets as transcending political projects and as means of enabling rational human beings to make decisions that serve their own interests (494). Despite the slight differences in analysis, O'Connell (2007) and Nash (2019) go to the same conclusion which is that the universality of human rights can be challenged because it does not serve the interests of people, regardless of their "status", but rather limits the benefit to the neoliberal elite.

The views that the current human rights discourse is not universal because it is closely linked to the interests of neoliberal elites have been challenged by some scholars who consider universality as a continuous struggle with neoliberal agencies. For instance, Ormaza and Ebert (2019), claim that human rights organizations have put a lot of pressure on donor governments who have leverage on the world bank to implement important organization changes within the bank that benefit human rights across the globe. This pressure has led to "the establishment of the World Bank Inspection Panel, as well as substantive ones, in particular the adoption of safeguard policies defining social and environmental requirements for the Bank's operations" (Ormaza and Ebert 2019: 484). Thus, this argument makes the difference between neoliberal agencies, such as the world bank, and human rights agencies that serve as counter-power. However, calling to put pressure on the neoliberal agencies, that promote and violate human rights at the same time, can be challenged by Baxi's views on the relationship between human rights and the state. According to Baxi (2002), "rights language enhances the power of the State against violations of human rights in civil society" (6). This is because the state is, eventually, the corpse, that has the legal means to protect human rights. However, overpowering the states can also lead them to violate human rights (6). Similarly, putting calling for neoliberal agencies to protect human rights eventually empowers their presence and paves the way for them to violate human rights in the service of the elites.

## Conclusion

In this essay, I challenged the claim that "human rights are universal" based on three different perspectives. Indeed, the human rights narratives are driven by patriarchal, western, and neoliberal discourses that do not achieve universality. First, the experience of women is not reflected in the human rights narratives which overlook the struggles of women especially in times of war as well as in non-western communities. This leads us to the second issue with human rights universality which is that such discourse aims at exercising western hegemony over other cultures. The human rights narratives try to penetrating other cultures before assimilating them with the liberal western understanding of human rights. Moreover, the claims for the universality of human rights clash with the neoliberal powers which promote certain rights and overlook others in the service of the neoliberal elites. The three aforementioned dimensions overlap with each other to create a hegemonic discourse that does not achieve universality. The aim of this essay was to demonstrate that universality cannot be achieved without a critical assessment of the narratives that drive the human rights discourse.

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