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CCHRR EDITORIAL SEPTEMBER 2020: The Wheel Has Already Been Invented, and We Should Begin with That

The mission of the Cross-Cultural Human Rights Review “to broaden the discourse within the field of human rights, producing stimulating research on the diverse cultural understandings and protection of human rights” is certainly welcome. It contributes to an unsettled decades-long debate over whether human rights can be thought of as truly “universal”, given the diverse world in which we live. It also responds to an increasing tendency on the part of often well-meaning human rights advocates to define rights in absolutist terms, expecting that they should have precisely the same meaning everywhere.

While human rights are, indeed, universal, they also are inherently flexible. The Universal Declaration of Human Rights and subsequent treaties explicitly recognize that it is legitimate for states, acting in good faith, to interpret human rights norms in ways that are compatible with the specific historical, cultural, and political context in which they are being applied. These interpretations are not open-ended, however, and rights can be limited by a government only for specific purposes, such as protecting the rights and freedoms of others, upholding public health and morality, and providing for the general welfare of society. These limitations must be necessary, not merely convenient or designed to perpetuate authoritarianism or inequality.

Unfortunately, government officials who mask restrictions on rights behind the veil of cultural relativism are too often more interested in undermining rights altogether, not simply to adapting them to societal values. The challenge for CCHRR contributors will be to disentangle legitimate means of understanding and implementing rights in ways that reflect a country’s particular characteristics from the self-serving claims of secular, as well as religious, leaders who claim to speak on behalf of entire populations.

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In the first issue of CCHRR, the editors referred to Professor Abdulahi An-Na'im's challenge as to whether there is a real consensus on the universality of human rights. He posed a key question, "What is missing in human rights?", to which neither he nor the editors offered an answer.

One cannot answer the question of what is missing in human rights or what human rights should be without understanding what they are in contemporary discourse. While it is appropriate to bring different cultural, historical, and social perspectives to this investigation, one cannot ignore the fact that human rights are now articulated not only in the UDHR but in global and regional human rights treaties that have received thousands of ratifications from countries throughout the world, North and South, democratic and dictatorial, religious and secular. In addition, thousands of civil society organizations, both domestic and international, today rely on these norms to protect themselves and others in their societies.

Whatever the complaints about who was or was not present to draft the UDHR in 1948, we know now what human rights are, because the governments that are obligated to ensure them and individuals around the world fighting discrimination and repression have embraced them.

This does not imply that human rights cannot change, expand, or contract to meet evolving reality. Treaties were created by politics and diplomacy, and they reflect a 20th century agreement on what the obligations of governments should be with respect to guaranteeing the rights of those under their jurisdiction. This consensus is based on the limited scope of human rights, which primarily defines the relationship between the state and its people.

Of course, CCHRR's mandate goes beyond human rights to include social justice, and one cannot quarrel with this broader scope. Societies require more context-specific guidance than truly universal human rights norms can ever provide, but the minimum standards set by universality remain a necessary, if not sufficient, requirement for the development of a just society. Indeed, human rights norms provide the framework within which societies are able to become more tolerant, inclusive, and equitable through their own "moral rules, in particular relating to religion, family, governance, education, and the economy."

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Very few human rights are absolute and defining them depends on finding a balance between the rights of individuals and the rights of others, including the society as a whole. Ensuring any human right requires financial and human resources, and competing rights may lead to different priorities, depending on the social and economic situation of the country concerned.

This balancing act requires good faith and good ideas, and CCHRR's call for dialogue on these issues is important. At the same time, however, the stakes are more than just theoretical, and dialogue will be more useful if it is articulated in the form of specific observations about specific cross-cultural challenges, rather than abstract theories. We are all guilty of stereotyping North, South, and regional characteristics, and it would be gratifying if CCHRR's contributors can go beyond such generalizations.

Critiques of specific aspects of human rights are more persuasive than general complaints of neocolonialism or exclusion, and it would be interesting to identify areas of consensus as well as areas of disagreement. For example, are there societies or cultures that believe in arbitrary rather than fair trials; racial or ethnic discrimination; suppression of religion, belief, expression, or assembly; government that does not represent the will of the people; or government rejection of any responsibility for the social welfare of individuals within a society, such as their rights to health, housing, education, and an adequate standard of living? What new universal rights should be added to the existing norms? Must every societal "good" be expressed in the language of human rights, as opposed to being achieved through scientific, pragmatic, and ethical debates over how best to deal with societal challenges?

The ultimate question posed by CCHRR's editors is "can human rights truly exist outside the cross-cultural?" The answer is yes... and no. The most significant innovation in the concept of universal human rights – rights that everyone enjoys, no matter where or how they live – is necessarily trans-cultural rather than cross-cultural. At the same time, human rights cannot be understood without any concern for the history and culture of the society in which they are being implemented. It is important to distinguish between interpreting universal rights through a social or historical lens and allowing such contextual concerns to override the very idea of universal rights.

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We are left with rights, to borrow a phrase from political science professor Jack Donnelly, that are “relatively universal”. How we define these rights can evolve, and we should expect variations in how they are implemented. The goal of human rights is not to change cultures (although they may have that effect in the long term, since no culture is static) but rather to articulate the obligations of governments to respect and ensure rights for everyone, without discrimination. If universal human rights are subservient to culture, they become meaningless. If they ignore culture entirely, they will die. Appreciating both the potential and the limits of universal human rights will make establishing and maintaining peace and social justice easier, which is no small accomplishment.

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