

HOW UNIVERSAL ARE THE HUMAN RIGHTS?

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1. Introduction

The purpose of this paper is to contribute to an ongoing debate on human rights, and more particularly on the twin problems of to what extent they are Western and to what extent they are universal. These are precisely twin problems because whatever is Western, from christianity via the major colonial languages to development models and science and technology, tends to be conceived of as universal, As a measure of Western power ; the idea Western = universal is found not only among westerners - in other words, it is accepted by many others. However, to pretend that something is universal does not necessarily mean that it is universal in any operational or meaningful sense, like anybody trying to sell shoes of size 40, or cars made for right-hand driving, will soon experience.

Before entering into the key dimensions for discussing this problem, time and space, when and where did the concept originate, how and why and what kind of cultural imprint does it carry, some conceptualization of human rights is necessary. I shall conceive of a human right as a norm, concerning the rock bottom of human existence, potentially for human beings everywhere. Like for any norms there are norm-senders (S) who say that this and that should be/should not be done; there are norm-receivers (R) whose task it is to see to it that this and that will be/will not be done; and there are the norm objects (O) who in principle are the center piece of the whole construction, for whom the human rights exist, individual human beings ^{everywhere}. The norm-receivers are the states, and the norm-sender is the community or organization of states, today generally interpreted as being the United Nations/Assembly. Obviously, however, the norm objects may also send these norms to the state as a receiver, "Thou shalt not imprison me without due process of law," "Thou shalt provide me with gainful employment," and so on. But it is the community of states that formulate the norms, put them into the shape of not only negotiable but ratifiable instruments, such as the three instruments collected in what is often called the International Bill of Human Rights (the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights). Basically, this is the material to be discussed.

2. Human rights: a historical perspective

Thus conceived of human rights have as their condition for existence a context with three clear constructs: individuals, states and communities or even organizations of states. Put differently, there is the assumption of a three tier world, a particular social construction that came slowly into being after the decline of the Middle Ages. But the background is broader.

Reciprocal systems of rights and duties (obligations) must be as old as human beings themselves; the interesting question is how they are constituted. One could imagine several ideal types. On the one hand there would be the idea of an egalitarian, possibly nomadic community with people woven together in nets of rights and duties, the net being made in such a way that everybody comes out of the interaction patterns relatively well protected and relatively evenly. Human beings are of course recognizable physically/biologically in this network but the more densely the net is spun, the more difficult or meaningless will it be to detach the individual from the network. The individual is in the net, not only in the knot, to use Panikkar's anthropological vocabulary.

Then there is another conception: there is a chief, a prince, a king with layers inbetween down to the most humble, highly vertical, but still collectivist. There are rights and duties within and between the layers, at the top not only rights and at the bottom not only duties. Feudalism is often described as systems of this kind, and although there were limitations put on the prince it was also quite clear that those low down in the pyramids were to some extent treated like property with whom the prince could do as he pleases. He might not always be pleased with everything he did, however, for there were also limitations on his exercise of power. Those at the bottom were definitely not always pleased.

However, in the 16th century Europe the three constitutive components took shape. Power was concentrated upwards in the pyramidal construction and vested with the kings and emperors (by the grace of God); an organization ultimately equipped with ministries and a cabinet, a bureaucracy emerged ^{around} the prince, ultimately to be known as the state. States

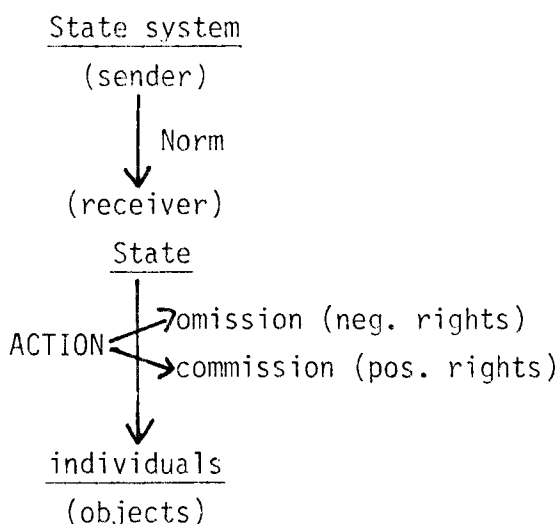
(1) Raimundo Panikkar, 'La notion des droits de l'homme est-elle un concept occidental ?' Diogene, N°120, 1982.

related with each other economically, politically and militarily in the emerging state system crystallized in the Peace of Westphalia (1648). And through means of production less tied to land and agriculture and the cycles of nature, and more to raw materials and industry and the processes of commercialization, geographical and social mobility became much more pronounced and the individual emerged as somebody capable of relating directly to God (through protestantism) to the King (as subject) and ultimately to the State (as citizen) ^{and to Capital (as worker, employee)}. Of course, the intermediaries were still there but a new construction had emerged. The King derived his power from God; ultimately the state built around the King overshadowed the King himself and the legitimation from God waned with God himself. The State needed ^a new source of legitimation with the sovereignty "coming from" the people (and very rarely getting back again). Vox populi, vox Dei became the transition formula.

About this process much can be said, but for the present purpose not so much is needed. The relations between individuals within a state were regulated by national (or "municipal") laws; the relationship between states increasingly through international law - ^{still} we are ⁱⁿ that process.

It is in this context the human rights should be seen: as a complex construct combining elements of national and international law, based on both of them and contributing ^{to} both of them. In the three tier system indicated we get something like Figure 1

Figure 1. The normative structure of human rights

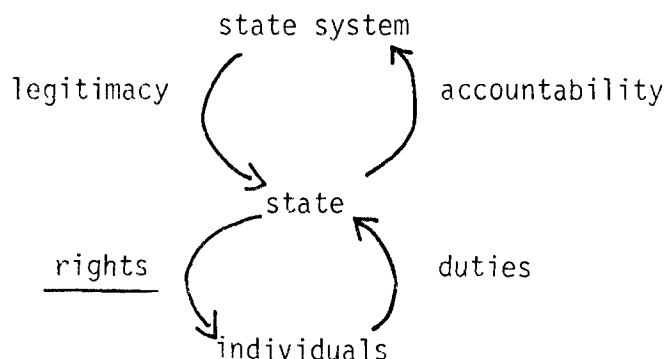


It may certainly be discussed to what extent the state system really was a norm sender before ^{the} emergence of relatively well organized systems in the form of the League of Nations and the United Nations, after the First and Second World Wars respectively. But the idea that the human rights somehow come from the outside is probably very old, at the same time as there has been a secularization process not only for God, but also for the King. A new outside Sender was needed.

The human rights in Figure 1 appear as concrete actions engaged in by the state. They are of two kinds, the negative human rights focussing on what the state should not do, on domesticating the state, limiting the state, making it obey due process of law. And then there is the second kind, the acts of commission, the positive human rights defining the state as a provider, with the individuals having claims on the state, not only against the state as for the negative rights. The civil ^{and} political rights are often seen as being more of the first kind, and the economic, social and cultural rights ~~more~~ of the second - the original French Declaration du droit de l'homme et du citoyen (1789) and the Universal Declaration of Human Rights (1948) can probably ^{be} seen as combining the two elements.

However, this distinction is less important and also mainly semantic, like the distinction between "freedom from" and "freedom to" - much depending on what kind ^{of} words are used and whether negative particles are made use of or not. More important would be some kind of image of the social structure of a human right, and an effort to develop an image is given in Figure 2.

Figure 2. The social structure of human rights



The focus is on something ^{called} / rights, conceived of as something the state gives to individuals whether their inherent and inalienable right or not. However, any social system analysis between three elements organized in three tiers would cry out for some image of reciprocity. If the state gives ~~or~~ concedes "rights" to individuals, what do the individuals have ^{to} / give back to the state, in return? And whatever it is, could this not possibly be called "duties"? Here I call them duties, indicating that the very phrase "human rights" actually is a misnomer for the more complete human rights/duties. In a sense it may even be seen as a propaganda formulation, relatively similar too (and not at all by chance) the phrasing used in economic theory when economists talk about "goods and services" (and not about "bads and disservices". Important, but also a mystifying euphemism.

And the basic thesis of this paper is that a single-minded focus on human rights, not duties, is like reading only one side of a contract and particularly, like omitting the small script. There is a warning, though, in the Universal Declaration, Art 29 : "Everyone has duties towards the community in which alone the free and full development of his personality is possible".

But the state is embedded in a state system, and the state system is only a norm sender if the state at least to some extent makes itself accountable to the state system, meaning that it will be evaluated by the norm it has accepted to receive, the human rights norm. The state will be evaluated in terms of human rights fulfillment, and the question then is what the state receives in return for being accountable. The answer given in Figure 2 is "legitimacy". Here one could imagine a process: the state system accepts a new state, confers on it the status as a bona fida member of the state system. It will immediately be exposed to the human rights norms and since these are institutionalized norms, however weakly, there is an element of accountability. With increasing accountability/fulfillment there will be increasing legitimacy. Of accountability and fulfillment the former is probably more important than the latter: a state may have a high level of fulfillment but make itself impenetrable to outside scrutiny whereas on the other hand there may be a state that makes itself fully accountable, exposing all its failures and shortcomings. The latter is probably more a member of the system than the former, subjecting itself to review.

Thus, there is a complicated balance at work and the human rights should not be confused with merely an individual right because the

norm object is an individual. Located in the interface between international and national law, in a sense as customary parts of both of them, the human rights serve an important integrity function in the total world normative system, as a net tying the three tiers together. (as indicated in Figure 2).

I do not think one can go further in the exploration of this phenomenon without looking into the duties. Between the emerging state and the emerging individuals a new contrat social took shape. I do not think by any means that we have seen the end of this process yet, but one key to the phenomenon is probably found precisely in the title of the original French document, referring not only to the rights of "man", but also to the rights of "citizen". A person may be a man/women in a more absolute, perhaps even universal sense - whatever that might mean - but is a citizen only relative to the state, and more particularly to the state of which he/she is a citizen. The duties that immediately come to one's mind would be the duty (particularly of men) to produce and (particularly of women) to reproduce; in other words to make the state rich in terms of non-human and human capital. Then, there is the economic duty to pay taxes and the political duty to participate or at least not to work against the political machinery. And finally there is the military duty (particularly for men) to sacrifice one's life for the cause defined by the state in the inter-state system.

Heavy duties, the latter even extreme. It is important to see the rise of obligatory war service, eventually for the whole population in increasingly totalizing way, from pertaining to a caste of warriors only to all able-bodied men and women, and ultimately to everybody as non-protesting victims in the light of increasing scope for human rights. Total rights would entitle the state to demand total duties; the total provider is entitled to total commitment. as (re)producer. The state gave, the state took, the name of the state be praised. The state "gives" emancipation to women, the state "takes" it back as military service, also for women. -and

In this process the state has a very rational argument: "if I, the state is to provide for all that is listed in the international checking list of rights, then I simply have to have more money." For this to happen the citizens have to work hard, producing a

surplus, directly and indirectly, that can be used to provide for what not only the citizens but the state system demands. The citizen would have the duty to produce for the state the surplus with which the state can provide for the citizen. And even, also, have the duty to make use of his and her rights, to claim but not to over-claim, thereby legitimizing the calls to duty from the state. He should not be able to extricate himself from the duties by not claiming the rights.

This is important because it also serves to illustrate why there is no contradiction between being high in fulfillment of human rights and at the same time being highly aggressive in the inter-state system, with a high level of ability to mobilize the citizens for that type of aggression. I am actually thinking both of the United State (high on civil/political rights) and of the Soviet Union (high on social-economic rights) in this connection. They have both worked out contracts with their citizens, both to a large extent able to make the citizens pay less attention to the neglected human rights (resulting in high level of unemployment in the United States, even of misery ; and in high level of political repression in the Soviet Union) because much is relatively well provided for. There may be other states in the world system with a very low level of provision for any kind of right and consequently also unable to mobilize their population unless they have other sources to draw upon, such as intact religious myths and beliefs and visions of missionary rights and duties. But such states may also be less dangerous, through wars, to tohers, even^{to} themselves. With the human rights a contractual - rather than normative-basis for mobilizing the population was/is institutionalized. Consequently, those less concerned with human rights will have to invoke more patriotism - the conservatives.

However that may be, there can be no doubt that human rights as an institution are linked to a particular historical phase in the evolution of the modern state system, in the West. More particularly, they are linked to a strong and central state with considerable funds at its disposal, otherwise many of the rights - the implementation of which could be quite costly - simply become meaningless. The idea is that of having a powerful provider in one's midst, some kind of latter-day God, not only omniscient and omnipotent, but also benevolent, like the welfare state should be. The human rights are there to see to it that omniscience and omnipotence are balanced with benevolence, of the negative and positive kinds mentioned. But as the construction has emerged, omniscience and omnipotence have to be taken in the bargain, and with obedient citizens claiming their rights but also exercising their duties they can become quite formidable in their consequences. Till we wake up one day, realizing that total freedoms, as "rights", have made us totally unfree, as "duties", where conservatives/fascists do not extend rights, or even take them away, liberals/socialists may bury us in rights. The net result may be disappointingly similar : a strong state demandint total commitment - in the nuclear age.

3. Human rights: a civilizational perspective.

The approach taken in this section will be less historical and more tied ^{to} a view of western civilization ^{less oriented towards time, more towards space.} The question to be answered is simply this: to what extent, and precisely how, can the human rights as we know them in their totality be seen as an expression of western civilization, with a relatively clear and consistent western bias? The question to be asked is not whether this is good or bad, only whether it is the case or not. Evaluation comes later.

For the exploration of this problem a vision of western civilization is needed, and the one that will be used here is based on so-called cosmology analysis. ⁽²⁾ Civilizations are then analysed along six dimensions, the particular stand taken by western civilization along these six dimensions is tentatively described, and what then follows would be an exploration of to what extent human rights can be seen as an exemplification of this particular civilizational position. Let us look at them quickly so as to get an over-view.

(1): SPACE. The Western assumption is that the world can be divided into two parts, a center which is in the West, and a periphery waiting to receive what comes from the West. There may also be an outer periphery, refusing to be incorporated as second class West, for which harsher treatment than the propagation of ideas, goods and services might be needed. In this image of the spatial arrangement of the world there are actually two ideas: one is universalism, that what is western is relevant for the whole world; and the other one is centralism, that ^{the} West is the center from which most, or almost all, valuable things originate.

I do not think it is unfair to say that the human rights tradition can be seen in this light. It emerged historically in the West and has been propagated from the West. The universal declaration of human rights was accepted by a predominantly western United Nations ^{in 1948} and might have had considerably more difficulties today. In the first years it was disseminated and propagated, and

(2) Galtung, Heiestad, Ruden, "On the last 2500 years in Western history" The New Cambridge Modern History, Companion volume, Ch 12, Cambridge 1978, pp 318-361

still is, from the West towards the rest of the world. In the Cold War ~~which~~ we have had almost during the entire period since the universal declaration, the human rights on which the West sees itself as being particularly strong, the civil and political rights, have been more emphasized than the rights where the Second World - actually also a part of the Occident, the socialist countries - see themselves as stronger. Moreover, in the ranking of states the western states by and large stand out as being highest in the fulfillment of human rights norms so that, whatever the reason for this may be, a dimension has been institutionalized whereby the center remains the center and the periphery the periphery. It is also possible for countries in the West to see themselves as judges over the rest of the world, distributing certificates of high and low levels of fulfillment, ~~investigating to what extent states all over are living up to these norms.~~ The objection would be that it is like this because the West simply is best, as also evidenced by the fact that there are more people wanting to migrate into the West than into other parts of the world. And the counter-objection is, of course, that this is

because West has in its power to define what is "best", not to mention to concentrate wealth that attracts people. But the obvious hypothesis remains that a norm (such as care for the aged within the family itself) more adhered to in the non-West than in the West would have a hard time being accepted as a "human right", and probably never would, at least as long as the West has the power to prevent it. The West would accept as rights norms more fulfilled in the West than in the non-West, thus guaranteeing their top position.

- (2): TIME. The western time perspective is that of progress, asymptotic convergence to an ideal Endzustand, possibly with a crisis before that state of affairs is attained. The human rights conceptualization is to a large extent of that kind. There seem to be two processes at work. On the one hand there is a given set of human rights and the pain-staking, sometimes quick, sometimes ^{slow} / process of states in fulfilling the norms, hopefully converging asymptotically to that ideal state. But then there is the second process of expanding the set of norms, finding new human rights, institutionalizing them, thereby approximating the ideal society in a process of norm expansion. Combined these two processes will always assure the leadership of

the leaders: those who are fairly high on implementing norms but see others catching up can retain leadership and distance to other countries (essential in a center-periphery conceptualization of the world) by adding new rules to the game. At the end of the process is paradise, and those in the center are to define what paradise looks like, and tend to define it in such a way that they themselves are closest. If others should catch up, all they have to do is to produce new norms.

- (3): KNOWLEDGE. The western knowledge structure is atomistic/deductive, as opposed to holistic/dialectic that can be found some other places. The fragmentary, atomistic aspect is reflected in two ways: the individual as the unit of norm fulfillment as opposed to the group, and the single norm as the unit of account. Instead of holistic judgments of whole countries as "christian" or "civilized" or "socialist" comes the painstaking mapping of the human rights realization for M individuals on N variables/^{of} human rights. The matrix is formidable like an enormous switchboard where red lights indicate deficiencies to be eliminated through adequate norm fulfillment. Again it is not a question ^{of whether this is} good or bad, only a question of noting western epistemology at work with its great attention to the social atom, the individual and the conceptual atom, the specific variable, the justiciable legal norm.
- (4): MAN OVER NATURE. The western perspective is that of Herrschaft over nature, meaning that man has the right to manipulate nature more or less as he wants, nature existing für mich, not an sich. One particular aspect of this is the unlimited right to kill animals for human consumption, even to expose them to highly painful treatment in the form of "experiments", presumably for human betterment through insight gained in matters relating to health and disease. Human beings may gain a right to a "clean environment, but the environment has no such right, only duties. I do not think it unfair to say that this anthropocentric perspective is fully reflected in the human rights tradition, even in the name "human rights". Animal rights are now (jokingly) being considered, nature's rights might be around the corner. But, they

are late in coming and may also come too late. And then there is the problem of who shall be the norm-senders when the directly concerned parties are not articulating in a manner understandable to the norm receivers, the states? Articulation has to be mediated through human beings, animal lovers and nature lovers, and their articulation may be far from reliable. Leaving that point aside it is clear that in the lack of consideration for non-human nature a position has been taken, and that position is entirely in agreement with western civilization, in general, at this point.

(5): MAN OVER MAN. The western position today combines verticality and individualism in a strongly competitive system of relations defining winners and losers. The model sketched of the human rights concept above is in accordance with this. There is the primacy of the state over individuals, but not unconditionally so. Individuals are subjected to the state as citizens (subjects), but are entitled to human rights in return. However, with perhaps as much as 90% of the economic assets decided over, centrally, inside nation states (and most of the rest at the international level, leaving almost nothing to the local level because local assets are small and ultimately tied up with central decisions), and this is repeated in the administrative decisions, verticality is certainly built into the concept. It might look to some as if this is not the case when the focus is on the word "right" alone; coupled with the word "duty" it becomes more clear. But this verticality is found in most social constructions. What makes for westernness is the way it is coupled to individualism, in strongly competitive relations. Human rights become individual rights to the extent that individuals are the norm objects, the units to which the norms are related and in which they are ultimately fulfilled. This excludes people's rights and the rights of groups, such as indigenous groups, ancient peoples, non-western cultures pocketed inside western societies and states ~~and efforts to imitate those~~ ^{inside contemporary} states. The condition for benefiting from the rights is not only that people reciprocate with duties, but also that they accept the

rights as individuals, not as groups. The right to education means each individual's right to have access to the public schools, as defined by and organized by the state. It does not necessarily mean the right ~~of an indigenous~~ ^{group} to institutionalize its own type of education, except for details in connection with some types of religion and language instruction. The rights are also coupled with the duties to not only permit but help the state in doing what the state deems necessary in order to implement the rights. Thus, if money is needed for the welfare state then the state might believe in hydroelectric plans in order to provide energy cheaply in a marketable form, and also to make a profit on the sale of energy. In doing so the state might act against the interests of groups, for instance of native populations or of "nature lovers". But as there are (almost) no group rights, only individual rights, there is no way in which this would be reflected as a countervailing human right, ~~or~~ the right of the Norwegian Sami to retain land intact for a reindeer based culture, undisturbed by hydroelectric power plants.

(6): GOD OVER MAN. In addition to all that has been said above the western perspective also presupposes an over-riding principle. It was God in the old days, one or more of the successors to God nowadays. One of these successors is the State, and the state is shaped in the image of a benevolent, omniscient and omnipotent King, as pointed out above. The human rights contribute to this construction. And the argument ~~has already~~ ^{even more} been made use of: it is in the interest of the enlightened state to take on an ever-increasing number of norms and implement them in the form of human rights, because the condition for meeting the norms would be an increasingly strong state capable of extracting ~~duties~~ ^{duties} from the citizenry. The new contract social starts looking like the old one. Thus, the human rights point up ~~words~~ ^{words}: not to God, but to ~~successor~~ ^{successor}, the State and the state system. Conclusion: it is not where the human rights are located on any one of these six dimensions that counts. ~~The package is~~ ^{total} ~~western~~ ^{unmistakably}. Propagation of human rights is a propagation of Western civilization, and is probably also partly intended as such. And that makes one ask the question: what are the concrete consequences in terms of contradictions ~~that~~ ^{and conflicts} have shown up, and may sooner or later show up more clearly, both within and between states, and ultimately for individuals? I think it is high time we start answering that question and stop seeing the human rights tradition as an unmitigated good. It is the product of a certain era and a certain civilization - of the state-building phase in Western civilization. The search for universal human rights is still on - and is an endless project.