

ARE HUMAN RIGHTS UNIVERSAL?



In 1947, the American Anthropological Association explained its view of the draft Universal Declaration of Human Rights to the UN Human Rights Commission: “How can the proposed Declaration be applicable to all human beings and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America?” the anthropologists asked.

The anthropologists further wrote that not only should there be focus on respect for human beings as individuals, as proposed in the draft declaration, but also on individuals as members of a social group. Ideas of right and wrong and good and evil could be found in all communities, but what constituted a human right in one community might be an anti-social notion in another community. The American Anthropological Association thus questioned the universal validity of the Universal Declaration.

The debate on the universal validity of human rights has not ceased, but meanwhile human rights have actually achieved global coverage.

Cultural neo-imperialism?

Not all states in the world today recognise human rights as a fundamental precept for the relationship between state and citizen. The breakdown of the colonial system created a lot of new states. As an example, only four African states existed in 1948 and were able to take part in the adoption of the Universal Declaration – today there are 55 African states.

Governments in several of the new states in Africa and Asia have accused human rights of being a tool for Western cultural neo-imperialism because the rights are claimed to be universal. The governments have particularly criticised the fact that human rights relate to individuals, not to collective units such as the family. And that they are rights, not mutual obligations. And that conflict resolution is a matter of observing rules, not of negotiation and focus on achieving an outcome.

‘Culture’ in the process of change

The criticism of the governments is similar to the criticism vented by the anthropologists in 1947 against the Universal Declaration. This view is actually thought to be obsolete today by many anthropologists because the cultural view expressed in the criticism then is static: It conveys an understanding of the world as divided into local cultures each constituting a delimited entity differing from all other cultures. Most anthropologists no longer subscribe to this strict cultural relativist view, that is, a view roughly proclaiming that a culture can only be understood against its own background.

This change in view is due, not least, to the global spread of capital movements and market economy as well as information technology, which has made a global discussion about human rights possible. State and cultural borders have been removed to a great extent. It is obvious that cultures receive and impart influences, and generally change. And despite the criticism of certain governments, it is obvious that human rights are used all over the world as a tool against the worst government infringements and for a life at least at a minimum subsistence level.

Right to cultural diversity

The widening of the human rights debate has also had the effect that it has become a right to identify with and practise other ways of living than those prevalent in the surrounding community. As an example, indigenous peoples have negotiated with governments, regionally and in the global forum of the United Nations for the right to cultural self-determination (and territories). During the past 25-30 years, the right to cultural diversity has become recognised by both the UN and the Council of Europe through the adoption of declarations and conventions aiming to protect not only universal individual human rights, but also the special cultural elements of indigenous peoples and various minority groups.

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An example

The development towards recognition of the right of groups to protection of their cultural identity may be illustrated by comparing a convention from 1957 with its replacement, a convention from 1989. The example deals with Conventions Nos. 107 and 169 on indigenous and tribal peoples adopted by the International Labour Organization (ILO). While the 1957 Convention has an express assimilatory aim, viewing assimilation as a way of removing discrimination of indigenous labour, the subsequent 1989 Convention expressly distances itself from this view. The preamble reads:

“The General Conference of the International Labour Organization, ... consider[s] that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilatory orientation of the earlier standards...”

The Convention emphasises the indigenous peoples' wishes for recognition and protection of their 'social, cultural, religious and spiritual values and practices...' (Preamble and Article 5 of ILO Convention No. 169). Denmark is under an obligation to provide such recognition and protection as one of the countries which have ratified this Convention (2010: 20 states).

Individual human rights and the right of groups to cultural identity

The right of groups to live their own cultural lives may conflict with the individual's human rights, that is, those rights that are in principle universal, individual rights.

One example is the Convention on the Elimination of All Forms of Discrimination Against Women (Article 5), according to which States Parties must take active action to change stereotyped gender roles or a perception of one gender as more valuable than the other. This provision interferes with the value systems and daily practices of many communities and groups. As an example, local customs of polygamy and marriage subject to a dowry conflict with the modern marriage legislation of the state, which has taken into account advocates of women's rights and the UN convention prohibiting discrimination of women. So here is a clash between family-based values on the one hand and rights concerning the individual based on non-discrimination on the other hand.

Certain practices are too repugnant

Which should prevail in case of conflict? The international individual human rights? The states' national legislation? Local customs? The states themselves lay down certain limits for the cultural practices of local communities and groups. Some cultural elements are considered so repugnant that they must be subject to an absolute prohibition, such as a prohibition against witch killings as practised by some local communities: Several African states prohibit this, just as they prohibit the practice of genital mutilation of girls by minorities or local communities.

Some limitations are so-called 'repugnancy clauses' as it was called in British colonial law and still is in the national legislation of some African states that used to be British colonies.

Human rights are in fact widespread

One question is whether individual human rights have become a universal moral precept. There is no doubt, however, that they are actually gaining terrain as a tool in, for example, the fight of NGOs against distress and oppression, although they do suffer setbacks in connection with state action to counter terrorism.

The current discussion on the universality of human rights does not concern the question whether human rights should be a universally applicable moral precept. Most debaters acknowledge that there are various ways of perceiving equality and respecting dignity and that there are no indisputable rights (but there are some indisputable, absolute prohibitions). Human rights must be fought for around the world.

The geographical reach of human rights and the fact that they cover ever more fields raise questions of their importance to communities with social, economic and political traditions with no previous history of human rights. What social, political and moral changes occur in such communities, and how does their legal perception change?

Basic, universally human needs

Human rights are asserted all over the world, but it depends on the situation and conditions in the specific community which ones of them are asserted. In one place it may be protection against torture, in another place it may be the right to have children by means of state-of-the-art reproduction technology.

Are human rights universal?

The entire catalogue of human rights is hardly relevant all over the world at the same time, but one of the essential purposes of human rights is relevant everywhere: protecting vulnerable individuals and groups against outrages and distress. What is locally perceived and experienced as human rights violations differs, but some basic conditions are universally human. They relate to the protection of dignity and integrity: food, water, housing and protection against state violence.

WHERE WE WORK



CALENDAR



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