Universal Protection of Human Rights: A Cross-Cultural Perspective

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Introduction

There is no denying the fact that the multiple processes of 'globalisation', which are taking place these days on a large scale, have caused significant transformations in almost all life aspects of millions around the world. There are now more interactions and exchanges not only within the same cultures but also among different cultures due to the increase in information flows across the globe, migratory movements, demographic changes and transformations in social structures and institutions.

The increased intercultural and cross-cultural communication has clearly enhanced intercultural exchange and learning. However, these growing intercultural encounters have also given rise to rhetorical and actual confrontation and defensiveness amid many groups that feel threatened by the external developments associated with the sweeping processes of globalisation. This situation highlights the importance of cross-cultural dialogue as a means to constructive communication among individuals and communities.

It is in this broad context that we intend to discuss the vital issue of universal protection of human rights. The proclamation of a set of universal human rights recognising the inherent dignity and the equal and inalienable rights of all members of the human family was a significant milestone in the pursuit of freedom, justice and peace in the world.

However, after sixty years of the adoption of the Universal Declaration of Human Rights and the promulgation of a growing number of international conventions and treaties as well as domestic legislations, human rights are still violated on a global scale. A quick examination of recent reports released by human rights organisations, national and civil society groups and watchdogs show a dramatic surge in human rights violations in many countries around the world.

The persistence of violence against women, children and other vulnerable social groups, the consequences of the 'war on terror' on fundamental human rights and liberties, the high priority accorded to the state security vis-à-vis the security and rights of individuals and the punitive responses to 'unlawful' migration are just a few of the many challenges to the universal application and protection of human rights.

It may be argued that many cases of human rights violations, notwithstanding the failure of states to honour their international commitments, are due to the inadequacy of the measures or political tools designed to ensure the respect for and protection of human rights. This insufficiency of implementation and enforcement measures, the argument goes, entails the rethinking of the whole instruments and policies adopted so far for the promotion and protection of human rights globally.

Although we admit that there is always a need for critical rethinking of the measures in place to ensure efficiency, we argue that the debate should not focus only on the tools but also on the strategies and more precisely on how relevant issues are debated and how decisions are made. It is in this context that we argue that cross-cultural dialogue[1] could be the medium not only for engaging in that reflective process but also for reaching consensuses that are indispensable for the universal protection of human rights. The paper will not be exhaustive but should be taken as an indicative document intended to help start debate on the topic of discussion in this paper.

The universality of human rights: the debate continues…
The universality of human rights has been clearly established and recognised in numerous international legislations. This global consensus is formally embodied in the Universal Declaration of Human Rights (UDHR) that was adopted and proclaimed by the General Assembly on 10 December 1948 (UN, 2009). Based on the idea that a common understanding of human rights and freedoms is of the greatest importance for their full realisation, the UDHR was the first global proclamation that recognised the universality of human rights as birthrights inherent to all human beings and as a concern of the entire international community. That is why it is considered the foundation of international human rights law and a common standard of achievement for all peoples and all nations.

The spirit of the UDHR was reaffirmed in the Vienna Declaration and Programme of Action that was adopted by the World Conference on Human Rights on 25 June 1993 (UNHCHR, 2009). In article 1, the Declaration affirms that "the universal nature of these rights [human rights] and freedoms is beyond question". The universality of human rights is asserted as the basis for the obligation incumbent upon states to promote and protect those rights. The Declaration also affirms, in article 5, that "all human rights are universal, indivisible and interdependent and interrelated", and that "it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".

Despite the broad consensus on the universality of human rights and the need for their universal protection, the debate on the justification and application of these rights continues unabated. As Meckled-García and Çali (2006:13) argue, "there is no single consensus on the justification of human rights". In view of the multidisciplinary and heterogeneous approaches to human rights, the authors maintain that the "normative human rights theory and human rights law (IHRL) [do not] represent homogeneous, univocal, doctrines".

The debate is compounded by the views of those who subscribe to some version of cultural relativism. Cultural relativism, in brief, is the assertion that human values, far from being universal, are context-specific and hence their interpretation, promotion and application are subject solely to the cultural norms and particularities of the society concerned (Pollis and Schwab 2000).

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[1] It is important to underline, at this early stage, that we employ the term 'cross-cultural' in a way that is indicative of the permeability and malleability of what is commonly perceived as clearly delineated cultural borders. Foregrounding the 'cross-cultural' is also an attempt to go beyond the limitations of the 'multicultural' mainstream discourses that see cultures as 'self-contained' and uncontaminated' units, and those 'intercultural' discourses that simply put more emphasis on the dynamic of cultural interaction whilst adhering to the same multicultural, essentialist understanding of culture.

Donnelly (2003) provides sufficient arguments against cultural relativism in terms of human rights, but he recognises the role of culture in the interpretation of universally held human rights. He suggests that particular human rights are like 'essentially contested concepts' in which there is a rather general consensus on basic meaning coupled with no less important, systematic, and apparently irresolvable conflicts of interpretations. In such circumstances, he admits, "culture provides one plausible and defensible mechanism for selecting interpretations (and forms)" (Donnelly, 2003:96).

Even the relative consensus outlined by Donnelly has been oftentimes questioned by those that are wary of the Western hegemonic position in the world. Dascal (1991:1) suggests that "after some five centuries of expansion, European—or Western—civilization has succeeded in establishing its cultural, political, and economic hegemony over the planet". This hegemonic position has enabled the West, it is argued, to determine not only global structures of power and wealth but also the terms of the normative structure of global society. Some African scholars, for instance, have maintained that the allegedly Western-based conceptualisation of human rights does not take into account the cultural, socioeconomic, and political realities of the other parts of the world (Ahmad and Deng, 1990). In particular, critics from countries that were under colonial domination in 1948 argue that the provisions of the UDHR reflect the view of the dominant powers of the time.

Others claim that the discourse of human rights is often used as a political instrument to justify intervention in the domestic affairs of other countries. The new doctrine of humanitarian intervention (Holzgrefe, 2003:18) in the name of human rights has been under attack by those critics who assert that many interventions conduced under this rubric were made only to serve pure political agendas.[2] To account for the disappointing records of human rights in 'developing' countries, some have also argued that "most developing countries are poor and cannot afford the full implementation of human rights" (Burnell and Randall, 2008:362). Although full realisation of human rights depends on the existence of appropriate socio-economic conditions, this argument is frequently used as an excuse by authoritarian regimes and their apologists to perpetuate their undemocratic rules.

For his part, Sen (2004:316) has argued that the proponents of universality of human rights mistakenly insist on the primacy of specific classes of rights (particularly civil and political rights) over supposedly economic, cultural and social rights. This distinction unnecessarily excludes significant conceptions of human rights from the purview of desirable and enforceable human rights.

The universality of human rights in a culturally diverse world

In view of the discussion above, it is clear that the debate regarding the universality of human rights and consequently their universal protection is far from over. Against this backdrop, a significant question that can be posed is how the universality and the universal promotion and

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[2] From instance, criticisms of the human rights argument as a justification for the war in Iraq abound not only in the Middle East but also in the West and other regions.

protection of human rights can be reconciled with the cultural diversity characterising our world these days. In other words, how the universality of human rights and its implications for promoting and protecting these rights globally can be maintained in the context of the cultural diversity and plurality of the contemporary world? Is it possible to arrive at a cross-cultural minimal understanding on human rights and the need for promoting and protecting them globally? These are significant questions that we will touch on in the following discussion.

There are obviously enough philosophical, ethical and legal arguments for the universality of human rights, and there is a board international consensus on them, which has provided the basis for their acceptance, promotion and protection globally. However, the main challenge, in our view, is how to engage those who, for various reasons, question or oppose the existing international norms of human rights because they perceive them as exclusive, ethnocentric or incompatible with all or some elements of their own value systems. As the previous discussion shows, there is still a great deal to be done to meet this pressing challenge.

To demonstrate some aspects of the ongoing debate on human rights and the associated issue of universal protection of these rights, we will discuss, in brief, how that debate is played out in the context of the Islam-West relation.[3] Once again, we have to admit that the subject is so complex and hence our discussion will be more indicative than exhaustive.

We often hear some commentators, especially outside the Islamic World, saying that the fundamental obstacle to any positive interaction between Islam and the West and their agreement on a set of common values consists in the fact that the Islamic values are at odds with Western ideals and values. In particular, it is argued that the value system defended by the West and the one promoted by Islam cannot be reconciled. Others argue that the restoration of religion to the sphere of the personal and its 'depoliticisation', that is to say its removal from the public sphere, is the main challenge that Muslim societies have to grapple with in order to effectively join the 'modern' world.[4] In sum, because Islam and the West are bound to interact, it is argued, they will inevitably clash because of their apparently irreconcilable values.

The atrocious attacks on the United States, on 11 September 2001, have ushered the world into a new era of greater uncertainty with global ramifications. It has also sparked more heated debates on the religious and cultural nature of 'Islam' in terms of its interaction with the 'West'. What followed these attacks, including other terrorist incidents in Europe, in terms of heightening the feelings of suspicion, hatred and overt violence on both sides are well known and cannot be overstated.

However, what we would like to underline at this point is that most of these debates, instead of engaging with specific practical issues, only added force to an already widespread assumption. Explained in terms of this assumption, the root causes of those events, and the background that made them vibrate strongly, lie in the underlying confrontation between two inherently irreconcilable worldviews, the Islamic and the Western. In other words, it is the long-standing

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[3] It is important to emphasise that we understand 'Islam and the 'West' as two highly complex and heterogeneous spaces that do not lend themselves to simple generalisations. We therefore are using these terms loosely to indicate what is commonly perceived as two spheres defined along certain historical, geopolitical and cultural lines.

[4] See, for instance, Salman Rushdie (2001) 'Yes, This is About Islam', *The New York Times,* 2 November 2001.

clash between 'the secular, modern Western civilisation' on the one hand, and the 'religiously-based and traditional Islamic civilisation', on the other. It is the clash that began with the advent of Islam, in the seventh century, and has been sharpened over the years by the political developments taking place in the Middle East and other regions.

One example that illustrates this point is the uproar caused by the 12 cartoons of the Prophet Muhammad that were first published by the Danish newspaper *Jyllands-Posten* on 30 September 2005, and then republished in a number of European newspapers in Austria, France, Germany, Italy and Spain. For many Muslims, the cartoons were provocative and extremely and deliberately offensive given that Islam proscribes making images of its highest prophet. For others, they were simply an act of exercising a fundamental human right, namely the right to freedom of opinion and expression, in a liberal, secular Western democracy. For many, the ensuing debate, which rapidly scaled up into aggressive rhetoric, wide scale-riots and violence, was only another manifestation of that ongoing confrontation between Islam and the West.

Another case in point is the wearing of *hijāb* and its variations by Muslim women and the ongoing debate on whether it symbolises something voluntarily adopted by these women to assert their distinctiveness and their observance of Islamic decency or a symptom of culturally internalised norms of Muslim society. There are obviously many questions that have given rise to unending debates and disagreements between the two sides, but we will not discuss them here. Suffice it to say that there is still a long list of pending issues in the Islam-West relation, and the subject of human rights continues to be high on that list.

A common feature of the above-mentioned debates is that they usually depart from a taken-for-granted understanding of the Western values, whatever they are, as a set of fixed values contrasted with another set of specific values promoted by Islam. No nuances are admitted, and the two value systems are seen as two closed worlds. This is, in our view, where the problem lies. Our intention at this point is clearly not to discuss what the Western or Islamic values really *are*. Our main interest lies in trying to go beyond these essentialist approaches and seeking to open up the debate to a more flexible and critical understanding of these two social realities.

As far as Islam is concerned, we think that there is a pressing need for having a holistic, dynamic and critical understanding of this religion as both a religious discourse and practice. This is because any understanding focusing solely on the Islamic holy book would lead to a historical and reductive reading. Likewise, an exclusive emphasis on the Islamic history, without taking into account the great inspiring, guiding and mobilising role of the holy book, would lead to a simplistic and purely materialist reading of the complexity of this religion.

What is often missed in the debates, referred to above, is the emphasis on the multivocality of Islam—and that of the West for that matter—and the plurality and diversity of the Islamic World as well as its internal debates and contests regarding the definition and interpretation of the religious meanings and applications. What is important to underline, therefore, is that the deliberate or unwitting omission of the multivocal nature of this religion and its internal debates in any discussion on this subject can only lead to reinforcing the widespread images of Islam as a unitary and timeless entity untouched by internal or external developments.

We have mentioned these examples not as an 'apology' for Islam, but to emphasise the need for a dynamic and critical understanding that takes into account the complexity and inherent mutability of all human realities, including the Islamic ones. The lack of this understanding will only keep us locked in the logic of perpetual antagonisms and self-created images of the others. This logic has also proved so limiting to human knowledge and creativity and to the possibility of achieving a minimal cross-cultural understanding on vital issues such as human rights and their universal promotion and protection.

The way forward: cross-cultural dialogue
Taylor (1999) maintains that arriving at a genuine, unforced international consensus on human rights could be achieved through something like what John Rawls describes as an 'overlapping consensus' This means that different groups and communities, while holding different or incompatible religious or philosophical commitments, would agree on certain norms that ought to govern human conduct. Taylor inquires whether this kind of consensus is possible at all. He responds in the affirmative, although he admits that it is not entirely clear yet around what the consensus would form.

At the same time, Rorty (1993) takes a different approach and speaks of an efficient culture of human rights that is based less on the belief in a historical human nature than on the process of sentimental education. The problem with this conceptualisation, however, is that it provides no basis for a legally binding universal application of human rights or even a minimally agreed basis for their protection. To move beyond Rorty's proposition and examine the possible contours of the proposed overlapping consensus, we will briefly present the ideas of two Spanish scholars and their contributions to this ongoing debate.

Cortina (1990) maintains that human rights are a set of demands—not mere aspirations—whose realisation and protection should be legally binding on the corresponding bodies. The reason is that the fulfilment of these demands and respect for these rights are the conditions of possibility for speaking of human beings in a meaningful way. She insists on the search for ethical criteria that are valid universally for enacting human rights as norms, whilst taking into account the varieties of moral maximums held by different cultures as long as they do not violate the minimal ethical criteria. Cortina refers to what she terms 'moral pluralism' as indicative of the common values that make possible the coexistence of different communities in a single society despite the diversity of their own moral projects.

According to Cortina, these common values would eventually represent a set of 'minimal ethics' or 'procedural ethics' (Cortina, 1990). These are nonnegotiable demands of justice recognised throughout society and from which we could proceed jointly to build a global consensus over those values. Cortina (1998) insists on the need to pursue intercultural dialogue among different cultures to decide on the set of values that humanise all of us without exception. In her view, the Kantian idea of 'human dignity' as something valuable in itself, and the ethics of dialogue based on the value of mutual recognition may provide the basis for a good ethical programme for the 21st century.

For his part, Martínez Guzmán (2001) has proposed a planetary minimal ethics that would reconstruct the moral minimums shared by the different live-worlds. He presents his idea as a

procedural proposal, that is, it indicates only the minimal moral procedure that makes the unity of the human reason compatible with the multiplicity of the voices in which it is expressed. It does not mean the imposition of a certain ethics of maximums, but the minimal recognition of the variety of moral maximums held by the different cultural traditions. In other words, it is a procedure of ethical minimums that could be filled in with the rich diversity of the different live-worlds.

From the discussion above it is clear that ensuring the universal acceptance and protection of human rights as an ethical and practical imperative requires an open, deliberative and participatory cross-cultural dialogue. However, the path of a genuine cross-cultural dialogue on human rights is not free from obstacles and challenges.

A key issue to grapple with is the need to deal with the asymmetrical relations between, for instance, 'developed' and 'developing' countries. As Habermas (2002:212) has argued, a consensus based on conviction cannot come about as long as symmetry relations do not exist among the participations—relations of mutual recognition, reciprocal perspective-taking, a shared willingness to consider one's own tradition with the eyes of the stranger and to learn from one another.

In addition, the historical and material legacy of colonialism should also be addressed. Some may regard colonialism as a phenomenon of the past, but for those who still suffer from its enduring consequences, the critical engagement with colonialism is still as relevant as it was many yeas ago. Wa Thiong'o (1986:8) has suggested that colonialism "involved two aspects of the same process: the destruction or the deliberate undervaluing of a people's culture, their art, dances, religions, history, geography, education, orature and literature, and the conscious elevation of the language of the colonizer".

There is therefore a need for examining critically the colonial past and the ways in which ideas such as 'civilisation' and 'development' and the very idea of human rights have been used to justify colonialist practices in many parts of the world. As Habermas (2002:212) has also suggested "we can criticize not only selective readings, tendentious interpretations, and narrow-minded applications of human rights, but also that shameless instrumentalization of human rights that conceals particular interests behind a universalist mask – a deception that leads one to the false assumption that the meaning of human rights is exhausted by their misuse".

Conclusion

To conclude our general discussion, we think that there are two fundamental elements that could be considered as a basis for engendering a constructive cross-cultural dialogue on human rights, which may lay the foundations for a minimal agreed understanding on the universal promotion and protection of human rights.

The first element is the need for mutual knowledge and mutual recognition among individuals, groups and communities on the basis of universally agreed common values. The key term employed here is 'mutual recognition' and not mere tolerance that may conceal behind it a sense of moral superiority or cultural relativism. As many commentators have pointed out, the biggest clash that the world may be experiencing these days is not a 'clash of civilisations' but a 'clash of ignorance'. There is thus a pressing need for mutual cross-cultural learning. Yet, the knowledge we refer to here is not a mere strategic knowledge that may be deployed to know the others in order to contain and dominate them. Rather, it is a mutual knowledge that is based on the recognition of the others and their differences and the acknowledgement of their worth (Omar, 2008).

However, the call for knowing and recognising the others in no way means the uncritical acceptance of them and their differences, because this would be tantamount to cultural relativism. Rather, on the one hand, it implies the acknowledgement of the existence of differences and submitting those differences to public debate. On the other, it means the recognition that differences in values and ways of life may be a source of social conflict. That is why it is equally important to try to identify and highlight cross-cultural commonalities that may serve as tools to transform those conflicts peacefully, and provide the basis for minimally agreed common values.

The promotion and protection of universal human rights does not happen in vacuum. It takes place in a certain cultural context in which core human rights are culturally legitimised, recognised and integrated as part of the cultural fabric. Any strategies designed to promote human rights will therefore need to employ a new discourse that is more culturally sensitive to the different worldviews on the basis of a commonly agreed understanding of those rights. As Chris Brown argues, "the need for a new way of talking about and promoting human dignity may itself be a feature of the politics of the next century" (Brown in Patman 2000:49). Besides, framed in the context of a new culturally sensitive language, universal human rights will not be seen as a homogenising discourse that glosses over local experiences and cultural and historical specificities. Rather, they will be presented as a vital issue worthy of serious consideration from different perspectives and cultural backgrounds within an ongoing cross-cultural dialogue.

The second element is the need for an accelerated educational effort at all levels whereby people of different cultures and regions could know each other in the way explained above. As privileged places for reflection and advanced learning universities can play a vital role in this educative process. Moreover, all these social and political educational efforts should be guided by an inclusive—not an exclusive—vision of the others and the recognition of their worth, despite their differences, as a minimal basis for a fruitful and peaceful cross-cultural dialogue.

We did not obviously want to outline any specific policies on how to implement and achieve the goals of this educational undertaking. It is our view that these policies are to be discussed and elaborated by all those who would be affected by them in an open, informed and participative public debate based on mutual recognition among all those involved. This fact highlights how an all-inclusive cross-cultural dialogue could be instrumental in providing an open forum for debating these issues and arriving at minimally agreed core values.

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