



## Is Justice Universal?

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The shocking images of the Virtue Police beating women in the streets of Kabul for lifting their veils, and Bin Laden's speech dividing the world into believers and infidels, has brought to the fore an old debate between universalists and relativists. Are we seeing a 'clash of civilisations'? Let us revisit the debates and issue a verdict.

### *Relativists and Universalists*

Apart from Marxism, the greatest challenge to the claim of universality of rights has come from the cultural relativists, and those that have made political use of their arguments. The relativist position is essentially that moral values, including those that support notions of rights, are culturally and historically grounded. Human rights are a Western construct, and are not transferable from one culture to another without trampling on the 'cultural identity' of the adopting party.

In the 1970s and 1980s, the main challenge to claims of universality came from Asia (the so-called 'Asian values' debate). Governments claimed that the Western emphasis on individual rights went against Asian traditions that placed greater value on community rights and individual duties. Western societies were labelled chaotic and degenerate, where community values had disintegrated. Two forms of relativism emerged: strong and weak. The strong version denies that universalism exists at all. Human rights are cultural imperialism.



Weak relativism posits that while there may be cultural variations at a surface level, the fundamentals of human rights are culturally shared.

During the ‘Asian values’ debate, weak relativists and universalists argued that the dichotomy between an individualistic West and a communitarian Asia was exaggerated. It is in the West (Europe) that one finds the most elaborate social security systems and in some Asian countries communities have been torn apart as countries have sought to compete in the global market. As Inoue, a Japanese professor, has argued, Asian governments have adopted some ‘Western’ concepts, such as state sovereignty, to justify human rights violations. Thus, their rejection of some concepts and use of others is opportunistic and selective, rather than fundamental. The growth of the human rights movement in Asia since the 1980s also indicates that civil society (if not state authorities) attach more importance to individual rights than the relativist discourse might indicate. At the same time, the fierceness of the debate between libertarians and communitarians in the western context shows us that these issues are unresolved *within* western societies.

In the 1990s, the relativism debate shifted from Asia to the Middle East and North Africa, in light of the rise of political Islam, or Islamic fundamentalism. The premises of the debate are the same. Let us review the arguments. Some state that Islam, like all religions, is paradoxically totalitarian and liberationist in tenets and tendencies. As the basic texts were written centuries ago and by various individuals they are inevitably unsuited to the modern age and inconsistent,



making them unsuitable for guides to political and social life, albeit not for the private life of each individual. Thus, we must blame fanaticism, not Islam, for torture, mutilation and terror. A complement to this argument is that true Islam is perfectly compatible with full respect for human rights and that the problem lies in a selective and abusive interpretation of the Koran, the Shari'a and other foundational texts. Governments or movement leaders supporting a radical interpretation of Islam have argued that they are simply implementing the law of God and that they defend all rights within God's mandate. However, as the defenders of this position would argue, this is less about doing the will of God and more about the authoritarian and totalitarian use of the word of God. According to Othman, for example, a member of Sisters in Islam, a group based in Kuala Lumpur, while Islam is used to repress women, the writings do not support this. Indeed, one of the central tenets of Islam is the notion of a common human ontology, *fitnah*, which would support equality between the sexes.

On the contrary, others claim that Islam is inherently totalitarian, much more so than any other religion and that to ignore that the fundamentalists are Islamic is to deny this reality. In this context, the West must fight Islam or lose to battle to protect 'civilised life'. It is not only people like Berlusconi who defend this position, but also liberal secularists and left-wingers, both western and of Muslim origin. Finally, some would argue that the key to this issue is the separation of what in Europe is called 'Church and State.' The affairs of state, or political contests, cannot be guided by claims to know the will of God,



because such claims are inherently impossible to disprove and are totalitarian in nature. The Crusades, the Inquisition, and the persecution of women accused of witchcraft claimed perhaps millions of lives. The turning point in the West was the separation of Church and State. When rulers claim absolute power or justify their actions by claiming that they represent God on earth, there is little possible resistance, for who is above God to whom we might appeal against those rulers? Following the separation of Church and State, new atrocities were committed, this time in the name of totalitarian ideologies, whose main characteristic is a circularity of argument that is akin to an appeal to a total god-like truth. Marxism-Leninism, the 'religion' to eliminate all religion, was also used to annihilate millions. Nazism and the 'purity of race' served to justify the Holocaust. The other major development that permitted the world to combat such atrocities, was the advent of the separation of powers, the institution of systems of checks and balances, the introduction of the notion of representation: in short, the advent of liberal democracy. This has been complemented increasingly, since 1945, by the notion of universal rights. These rights are there to protect individuals from government and state abuse. Thus, the separation of Church and State, and the establishment of democracy are the best insurance policy against totalitarian tendencies. Deprived of claims to absolute truth and of a total hold on power, political leaders are forced to respond to the concrete needs of concrete people and individuals. Others, citing the case of Morocco, point out that the best way to combat extremism is to use the legitimacy



conferred upon rulers by Allah paradoxically to combat those who claim to speak in his name to introduce a fascistic order. Other, yet, have argued against the 'secularisation' thesis, saying that by blocking Islamic fundamentalists from power we are 'blocking' the course of history. That the best thing to do is allow it to come to power and then to inevitably undergo the process of wear and tear, reform and liberalisation that has been the fate of all authoritarian or totalitarian political orders.

### The Verdict

Due to my lack of knowledge of Islam and the reality in dominantly Islamic countries, I cannot do justice to any of these theories and positions. However, as someone who has worked extensively on human rights issues, I can make the following statements. First, the fundamental texts of all religions are both full of atrocity and deep wisdom. A few examples suffice. We have the commandment: "Do not kill a soul which Allah has made sacred except through the due process of law." (6:151), or "Do not let your hatred of a people incite you to aggression" (5:3). And, on the other hand we have "Let those who fight in the cause of God who barter the life of this world for that which is to come; for whoever fights on God's path, whether he is killed or triumphs, We will give him a handsome reward." X offers a list of such commands: "torment to Non-believers (IV.56) "Only Islam is acceptable" (III.85) "No friends from outsiders" (III.118) "No friends with Jews, Christians" (V. 51) "Kill those who join other gods with God wherever you may find them" (IX. 5-6), "Say to the Infidels: if they



desist from their unbelief, what is now past shall be forgiven; but if they return to it, they have already before them the doom of the ancients! Fight then against them till strife be at an end, and the religion be all of it God's." (IV.76) The list goes on.

'Our' Bible is no different. It is also plagued with contradiction. The Bible teaches us to turn the other cheek, but also that we must claim and eye for an eye. It teaches us that all people are children of god, but is full of statements about the inherent evil in women, with Eve as the Arch Temptress. In the West, religion was once used to justify repression and persecution. However, common to these texts and those of other religions are the notions of the sacred nature of human life and of brotherhood. On this basis, it is possible to construct a common universal understanding of fundamental human rights. In sum, we have in common our humanity and our need to preserve it by protecting life and dignity.

Second, as far as my limited, and admittedly euro-centric knowledge, indicates, the notion of individual rights and freedoms was born out of the Glorious, the French and the American Revolutions, inherited from the earlier thought of Greeks, Romans and Christian theologians of the Middle Ages. Democracy and the separation of Church and State were also products of political, cultural and social developments in the West. This does not mean, however, that such values can not or should not become universal. There are some 'goods' which, because they benefit all mankind, become less important because of where they were 'born' and more important because of the



fact that their content leads them to belong to everyone. It would be foolish to reject vaccines, aeroplanes, railroads, the wheel, the computer, or any other number of inventions, because they are 'Western' or 'Eastern'. Those of us who live on the Iberian Peninsula are only too aware of the 'civilising' role played by the Moorish occupiers, in areas ranging from medicine, architecture, astronomy and maths. Furthermore, the concepts of justice and brother-sisterhood are universal. There are different conceptions of the ends of justice (retributive, compensatory, rehabilitative, and so on) but these differences and nuances exist as much within the West as in the East, North as well in the South. Indeed, if we take the ICC Statute and the abolitionist movement as indicators we see that the global tendency is to view justice less as a matter of 'an eye for an eye' and more as a question of 'balanced retribution'-rehabilitation-compensation. In sum, the legal codification of rights may have been a historical product of Western society, but the values behind the notion of rights is present in Muslim culture as much as in any other.

Third, the UN Charter and Declaration of Rights show that there is as much uniting us as there is dividing us. The Declaration is a statement of consensus about essential values for human well being, complemented by the ICCPR, the ICESCR, and those on genocide, slavery, torture, racial discrimination, rights of the child, minorities and religious tolerance (the rights of women is, perhaps, the sole exception). The Vienna Declaration and Programme of Action of June 1993 issued by the United Nations World Conference on Human Rights



in Austria states that the universality of human rights is 'beyond question', and that 'all human rights are universal, indivisible and interdependent and interrelated', which means that one cannot simply chose among rights. The Declaration further places States under the obligation to promote "*universal* respect for, and observance and protection of, all human rights and fundamental freedoms for all" (italics mine). The Charter indicates that such obligations apply to all states and the non-discrimination principle indicates that the rights are for all. States enter into the UN voluntarily and compact with such Declarations and Conventions freely. At the same time, the UN promotes respect for cultural diversity, but not at the expense of the kinds of rights that make it possible for human rights to have a dignified life. It can be argued, in fact, that respect for rights is the best way to ensure respect for culture and diversity. Fourth, we must see this question in historical perspective. We must be brave enough to admit that some so called 'cultural' practises are not acceptable, and we must campaign against their use, just as the suffragettes fought to gain voting rights and the Anti-Slavery Society sought to eradicate the slave trade. In the age of political correctness, it is not 'proper' to speak of the 'civilised world' or 'cultural superiority'. But we can speak of the superiority of certain practises over others. Men and women who abuse children, wherever they are, are morally inferior to those who seek to protect and nurture them. Men and women who torture their enemies, and morally inferior to those who seek their rehabilitation. Men who declare women inferior and do give them a right to an education are



morally inferior to those who recognise that women are equally capable of learning and contributing to the store of human understanding and wisdom.

Fifth, relativists tend to make monolithic what is homogenous. Some of the fiercest critics of repressive aspects of Islamic law are Muslims. Indeed, if we relativise cultures without understanding that culture is a dynamic concept, a product of inter-civilisations interaction, we miss the point. The Muslim world is full of political and NGO activists that are trying to turn the tide against fundamentalism. We do them no service if we speak of the impossibility of finding common universal ethical and moral grounds for global governance.

Sixth, however, we must admit our own failures. The West-centricity of the West has not manifested itself in leading a political revolution by establishing liberal democracy and basic rights as a end to be achieved by all. Rather, the weakness of the West has been its inability to deal with the issue of social economic and cultural rights as they apply to *everyone* (which is a matter of global distribution of resources) the issue of collective rights (which entails mitigating sovereign rights to allow more autonomy for minorities), the matter of duties correlative to rights (which means taking on a correlative duty to support the implementation of rights globally according to one's capacities), and the question of self-determination. It has been too selectively focused on individual rights to the detriment of others. Of course, individuals are the basis of all rights, and in this sense,



community rights cannot replace individual rights as some autocratic leaders would suggest. Rather, the issue is to understand that community life is not exhausted and represented solely by a list of individual rights. The situation of indigenous peoples, and their demands for autonomy with national states that do not represent their aspirations and desire for cultural autonomy and economic independence, is the best example of how difficult it has been for the West to make room for group claims. The global community has also failed to sufficiently explore the issue of duties. We have an international bill of rights, but we do not have a correlative international bill of duties, which would surely place the onus on governments to create the conditions for the effective exercise of rights. In an era of globalisation, moreover, such duties cannot be restricted to the national sphere, but must be seen as duties that encompass the whole human race, with those that have the greatest benefits obligated to shoulder the largest duties.

Finally, moderate Muslims are faced with an enormous task: they must combat the totalitarian use of their religion, and make efforts to separate religion and politics. TO quote an expert, “Muslims are in the best position to take the lead in the common cause against terrorism. The terrorists are among us, the Muslim communities of the world. They are part of our body politic. And it is our duty to stand up against them. We must also reclaim a more balanced view of Islamic terms like fatwa. A fatwa is simply a legal opinion based on religious reasoning. It is the opinion of one individual and is binding on only the



person who gives it. But, since the Rushdie affair, it has come to be associated in the West solely with a death sentence. Now that Islam has become beset with the fatwa culture, it becomes necessary for moderate voices to issue their own fatwas. So let me take the first step. To Muslims everywhere I issue this fatwa: any Muslim involved in the planning, financing, training, recruiting, support or harbouring of those who commit acts of indiscriminate violence against persons or the apparatus or infrastructure of states is guilty of terror and no part of the Ummah. It is the duty of every Muslim to spare no effort in hunting down, apprehending and bringing such criminals to justice. If you see something reprehensible, said the Prophet Muhammad then change it with your hand; if you are not capable of that then use your tongue (speak out against it); and if you are not capable of that then detest it in your heart. The silent Muslim majority must now become vocal. (Ziauddin Sardar, *The Observer*, 23 September 2001).

The West has another task: to show a greater understanding of the real needs of people in the Muslim world, to exercise their duties more effectively, and to fully support the drive towards the establishment of a system of international justice that is effective.