

The Universalism of Human Rights or Cultural Relativism?

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Most of main legal comments on human rights law present concerning on the cultural context which is attached to the universal importance of human rights. For those approaches universalism and cultural relativism[\[1\]](#) are sharply opposing sides of the implementation of human rights.[\[2\]](#) However, for some authors relativeness is one of the options of universalism. For instance, Rainer Arnold considers that universalism can be absolute and relative. In this context he includes cultural relativism into the relative universalism (we will look through again this task below).[\[3\]](#)

There are 2 approaches to the expansion of human rights over the world. Cultural relativists think that cultures and religions of every society should be taken into account when the idea of universal human rights is applied. Meanwhile, universalists consider that human rights and freedoms are so common that it can be implemented directly without paying a serious attention to cultural context of societies.

The debate between these 2 approaches embraces the right to freedom of expression too. Freedom of speech / expression is one of the 3 most important concepts which is necessary for every society.[\[4\]](#) Present increasing problems on immigration, resistance to adaptation and integration into Western liberal societies by minorities demands to keep cultural and religious differences in focus in respect of human rights. For example, there is a special section under the name of "A Code of Practice for Muslims in the West" in the official website of a prominent Islamic religious leader Sistani. This section has 63 heading with hundreds of permissions and prohibitions for

the people who live in Western liberal democratic countries.[\[5\]](#)

What is the way out? Where is the golden line between the tolerance to cultural relativism and the loyalty to universalism of human rights? So, we will clarify universalism as it is against relativism. Then the right to freedom of expression will be discussed as one of the main rights which are in contradiction with cultural relativism. At last, we will see example countries, which can prove that cultural background is not necessary to establish liberal democracy and to provide human rights.

Universalism Versus Relativism

What is universalism? Universalism of human rights is an *ideological concept* which is one of the columns of public awareness in the world, however there are a lot of human rights violations.[\[6\]](#) Therefore, why there is a powerful concept of relativism as we will see below.

Universalists claim that human rights should be accepted in world scale, so Rainer Arnold calls universalism as a *propensity towards global acceptance* of human rights.[\[7\]](#) But we should differentiate universalism of utilitarian political philosophy and universalism as human rights. Utilitarianism grounds on the greatest happiness for people. The universalism as a form of utilitarianism does not separate persons, which is a main feature of human rights law. Unlike utilitarianism as a type of universalism, human rights related universalism shares the view that every person has a set of fundamental interests that merit strong protection in all contexts.[\[8\]](#) In result, universalist approach of human rights is based on individualism, while utilitarianist approach is a “consequentialist one” which means the end result – consequence is the most important discretion.[\[9\]](#)

Not depend on being of different ideas about the source which the idea of universalism comes from, absolutism is one of the

main elements of universalism. In the light of claim to absolutism by universalism, there is a logical question that, are there limits to the idea of universal human rights? This question is significant especially in regions (such as Middle East, Balkans etc.) where “clashes of culture” are imminent.[\[10\]](#) Expansion of human rights have been hampered by 2 related factors – localism and culture.[\[11\]](#) It is supported especially by anthropologists that Western countries’ universalist approach to human rights should be critiqued and cultural differences and the meaning of “culture” should be supreme ethical value. Anthropological critics of universalism is based on the “person” as a socially constructed nature, rather than “individual” which is a ground of traditional human rights concept[\[12\]](#) because for the anthropologist approach, cultural characteristics of any society are main factors to define a human’s nature, because social factors are more important than its natural – “given” particularities. In other hand, traditional human rights concept is based on natural rights, i.e. such characteristics which were given to every individual not depend on her (his) society, culture, religion etc. It seems, relativist approach in its radical form is against basis of human rights institution.

American-British social anthropologist of law and human rights, Professor of Human Rights and Professor of Anthropology and Law at the University of Connecticut Richard A. Wilson cites 3 shortcomings of cultural relativism[\[13\]](#). The first shortcoming is moral nihilism – as cultural relativists generate meta-narrative and totalizing claims.[\[14\]](#) Undermining common values and being based on very weak argumentation as relying on emotions take relativists to moral nihilism, which most of post-modernists are afraid to acknowledge[\[15\]](#). This meta-narrative approach is a part of politics of non-democratic and dictatorial leaders who are looking for a justification for their acts opposing international human rights.[\[16\]](#) In 2006 Vladislav Surkov, the First Deputy of the Chief of the Russian Presidential

Administration coined the term “sovereign democracy” and called Russian system as a “managed democracy.” It soon became the official doctrine of Putin’s Russia. The Doctrine claims Western interference imposes Western style liberal democracy on Russian society.[\[17\]](#)

The leaders under effect of the “sovereign democracy” doctrine misuse this notion to avoid from the providing human rights and freedoms in their countries. For instance, in 2016 November Kazakhstan President Nursultan Nazarbayev said: “We get called a “dictatorial” country, or moreover “autocratic.” This is nonsense. This is told by those who know nothing of our way of lives... The way we rule today is normal for our country. The desire of western countries to make Kazakhstan into an American-style democracy is completely unsustainable.”[\[18\]](#)

Another post-soviet leader Ilham Aliyev, President of the Republic of Azerbaijan says in September 2015: “There is being continued to put all in the same shelf. It seems some global forces creates, so to speak, their own influence points. But we have own way.”[\[19\]](#) For Surkov and the leaders who have the similar approach, human rights are not so universal which can be implemented directly without taking into consideration cultural and local particularities.

The second shortcoming is that cultural relativists have no clear image about what is culture. Most of relativists reify “culture” and construct it as bounded adequate to their post-modernist approach. Instead of this approach “culture” is being de-reified and deprived its ontological meaning by recent discussions and predominant approaches.[\[20\]](#)

The last shortcoming of cultural relativists is that they undermine international human rights system and ignore transnational juridical process. However even indigenous people, to whom relativists often apply within their theory, apply international human rights within the frame of their

cultural rights and freedoms. Moreover, indigenous people are engaged in their territorial and linguistic rights with the governments, so it increased their status to a higher degree as a separate institution of human rights.[\[21\]](#)

The Right to Freedom of Expression Against the Background of Cultural Relativism

Rapid globalization, also massive migration to Western liberal countries leads concerns about Western liberal and cultural or religious approach to the right to freedom of expression because of moral sensibilities of immigrants based on their culture.[\[22\]](#)

There are 2 controversial problems on this issue. The first is that, the majority who prefers to live under liberal values should respect to moral interests of minorities whose culture or religion clashes with those values in some points. Prophet Mohammed cartoons in Danish newspaper, Salman Rushdie's "Satanic Verses," Charlie Hebdo terror, the movies which are depicted Mohammed face, burning Holy Quran by a priest and other similar issues and the reaction of Muslim people to them are examples for this problem which is coming from the disrespect or over-respect to cultural and religious relativism of human rights, in those cases the right to freedom of expression.[\[23\]](#)

The second issue that cultural or religious societies or people who do not agree with the universality of human rights and freedoms should be tolerance to common values which is defined by human rights institution and liberal values. For instance, homophobic one should learn to tolerate public displays of homosexual love (at least in the level of public displays of heterosexual love is allowed). Believer should be tolerance to the public display of atheist approach, which (s)he finds it distasteful, silly and discouraging for his (her) faith and belief.[\[24\]](#) The first rationale behind my arguments is that those values, which are recognized by the

United Nations as Universal and Common for all people, have been accepted by almost all states with signing and ratifying (as International Human Rights Declaration and International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, at least). Second, those values intend tolerance and respect to all people not depend on their culture, religion etc. Third, all those values can work only together. The world has witnessed that, any value of international human rights cannot survive separately apart from other components human rights institution.

There are 2 radically different systems in respect of the freedom of expression and hate speech – American and European systems, [\[25\]](#) which one of these is applicable for each of options above. American system is based on Oliver Wendell Holmes's and Louis Brandeis's opinion on the case of *Schneck v. United States*. For these 2 iconic judges, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." [\[26\]](#) Holmes and Brandeis expressed such doctrine that the risk or threat to safety should be clear and present to justify for the limitation of the freedom of expression.

This would be also a ground for the *R.A.V. v. City of St. Paul* case. Several teenagers burned their African-American neighbor's lawn and St Paul, Minnesota ordinance penalized them within the frame of "display of any symbol that arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." The matter is not about the damage to property (lawn), it is about the freedom of expression. But the Supreme Court of US void the conviction with Justice Scalia's prominent phrase: "The government had no authority to license one side of a debate to fight freestyle, while requiring the other to follow the Marquis of Queensbury Rules." [\[27\]](#)

The similar situation arose in Europe also, but with completely different result. Roger Garaudy (Ragaa Garaudy)

wrote the book claiming the Holocaust was a myth. In 2003 European Human Rights Court decided that this claim cannot be licensed to undermine justice and social peace. Court decided that, Garaudy's freedom to deny the Holocaust "was clearly outweighed by the harm that came from such statements." [\[28\]](#)

All those opinions of American and European judges are universalist approach. American point of view is appropriate to the section (a) above (freedom of expression of minorities, in this case teenagers who burned the lawn should be protected within the frame of the freedom of expression). But the European Human Rights Court's standing in the case of Garaudy v. France is appropriate to the section (b) above (the subjects whose minds can be considered as minority in the society, in this case Garaudy should obey to common values as universal human rights and freedoms).

Example Countries, Which Can Prove That Cultural Background Is Not Necessary to Establish Liberal Democracy and to Provide Human Rights

Besides such cases there are a lot of example countries, who can prove that the right to freedom of expression can be implemented in range of societies, not depend on their cultures and other local characteristics.

Costa Rica is characterized by Reporters without Borders – international non-profit, non-governmental organization which promotes and defends freedom of information and press freedom, in Media Freedom Index 2016 as shown below: "The Latin American country with the best record on respecting human rights and free expression, Costa Rica is remarkable exception in a region characterized by violent crime and corruption." [\[29\]](#)

In 2004 Costa Rica made comeback after Ulloa case. On May 19-21 and December 13, 1995 journalist Mauricio Herrera Ulloa wrote several articles in the newspaper "La Nación" which partially reproduced from the Belgian media. Those articles

were about illegal acts by Félix Przedborski, Costa Rica's honorary representative to the International Atomic Energy Agency in Austria. On November 12, 1999 Criminal Court of the First Judicial Circuit of San Jose found Mauricio Herrera Ulloa guilty on insulting constituting defamation and fined him, also newspaper La Nación for personal and moral damages and ordered the newspaper to publish a portion of court decision.[\[30\]](#)

In July 2, 2004 Inter-American Court of Human Rights found that the State violated the right to freedom of thought and expression protected under Article 13 of the American Convention on Human Rights, in relation to Article 1(1).[\[31\]](#) It was a major problem which seemed to have set back the media freedom in Costa Rica. After this case Costa Rica has increased its level of providing the right to freedom of expression year-by-year. For example, only in 2015 Costa Rica jumped up for 10 levels in its ranking in World Press Freedom Index and now it is on the sixth place over the world and the first place in Americas.[\[32\]](#)

Another example is Botswana. It is considered free state by Freedom in the World 2016 report of Freedom House – U.S. government-funded non-governmental organization which conducts research and advocacy on democracy, political freedom and human rights.[\[33\]](#) The Constitution of Botswana provides for the protection of rights and freedoms and intends limitations in such scale which is in the most democratic countries.[\[34\]](#) The Press in Botswana has an effect on public choices and it can influence political choices.[\[35\]](#) Daron Acemoglu and James Robinson mention in their famous book *“Why Nations Fail?”* that, even hunter-gathers such as San people in modern Botswana can create modern political and economic institutions and can live under democracy and Western values not depend on their cultural origin.[\[36\]](#) If we compare the ranking of Botswana in World Press Freedom Index to the countries' rankings who have similar cultural and historical background such as Zimbabwe, Zambia, Lesotho, Swaziland either

from the point of view of their customs and traditions, or from colonial past, we can see that there are similar cultural contexts, but different approach to the rights and freedoms.[\[37\]](#)

Conclusion

In recent years under the triumph of far-rightist approach to international politics and human rights issues by powerful and important countries (such Putin and his official “managed / sovereign democracy” in Russia) universalism of human rights and freedoms is increasing its importance. Misusing of such interpreted meaning of “democracy” by authoritarian leaders makes liberal values popular again. Peoples who have been made to believe that they had “own way”, see that this way does not lead to development and applies to “old liberalism” – the concept of universal human rights.

A huge torrent of migrants to Western liberal countries has made an equal and global approach to all peoples not depend on their culture, religion, ethnicity, traditions etc. inevitable. Of course, it has taken to the expansion of far right. But their fail in elections in France, Austria shows that the universalism is more popular among voters, who have been politicized in respect of migrants.

At the same time there are a lot of hopeful examples in the world – from Taiwan to Ghana, from Costa Rica to hunter-gathering tribes of Botswana. Without any clear definition to culture, with its moral nihilism and with undermining transnational juridical process, also its openness to misusing by non-democratic regimes and leaders, cultural relativism is not a solution for human rights and nowadays global problems.

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