

## Cross - Cultural Legitimacy of Human Rights: Can Human Rights be Relocated in Cultures different from their Origin?

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### Abstract

This article critically examines the cross-cultural legitimacy of human rights, delving into the complex question of whether these fundamental rights can be relocated into cultures different from their origin. The discourse surrounding human rights often assumes their universal applicability. However, the diversity of cultural contexts raises important questions about the extent to which these rights can be embraced and implemented across different societies. Through an exploration of cultural relativism, ethical pluralism, and the challenges of cultural adaptation, this article analyses the dynamic interplay between human rights and diverse cultural landscapes.

### Key Words

Human Rights, Cultural Relativism, Universalism, Cross-Cultural Legitimacy, Ethical Pluralism, Global Justice.

### 1. Introduction

Human rights, as articulated in international declarations and treaties, are often regarded as the bedrock of a just and equitable global society.<sup>1</sup> However, as societies become more interconnected, the question of whether these rights possess cross-cultural legitimacy emerges as a crucial and contested issue. The belief in the universality of human rights presupposes that certain fundamental principles are inherent to all human beings, transcending cultural, geographical, and historical differences.<sup>2</sup> This assumption, however, prompts a critical examination of the potential clash between the universality of human rights and the diversity of cultural values and practices.

Cultural relativism, a perspective emphasizing the importance of understanding cultural norms within their own context, challenges the notion of universal human rights by asserting that each culture should determine its own ethical framework. This article seeks to navigate the tensions between cultural relativism and the universality of human rights, investigating whether a middle ground can be reached to reconcile these seemingly opposing perspectives. Additionally, ethical pluralism introduces the idea that diverse cultural values can coexist within a framework of shared ethical principles, fostering a more inclusive understanding of human rights.

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<sup>1</sup> Jack Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6(4) Human Rights Quarterly 415

<sup>2</sup> *Ibid*

As we explore the possibility of relocating human rights into cultures different from their origin, we encounter practical challenges and ethical dilemmas. How can human rights be adapted to accommodate cultural variations without compromising their core principles? Can a balance be struck between preserving cultural autonomy and upholding a global standard of human dignity? These questions underscore the need for a nuanced examination of the intersection between human rights and cultural diversity, urging us to reconsider the universality of these rights in the face of diverse and evolving cultural landscapes. This article seeks to contribute to the ongoing discourse surrounding human rights by critically evaluating their cross-cultural legitimacy and the potential for their relocation into diverse cultural contexts.

## 2. Universalism vs. Cultural Relativism of Human Rights

Universalists consider human rights a set of standards that all nations and cultures should universally accept and respect.<sup>3</sup> However, some critics—cultural relativists like myself—argue that the concept of human rights is not truly universal because it is rooted in Western values and beliefs, which cannot be easily transferred to or reconciled with other cultures, especially in different jurisdictions. The issue of whether a set of values based on traditional Judeo-Christian values and philosophy can be relocated into cultures different from that of the West, where they were created, is a complex one.

On one hand, there is some degree of universality, at least in connection to some fundamental human rights ideas and precepts, notably those that touch on the rule of law, the sanctity of human life,<sup>4</sup> and dignity,<sup>5</sup> regardless of cultural influence and background.<sup>6</sup> Articles 3 and 5 of the Universal Declaration of Human Rights, for example, safeguard the right to life, liberty, and security of a person, and further prohibit torture and cruel, inhuman, or degrading treatment or punishment.<sup>7</sup> These rights embody fundamental, generally shared principles in the modern form of rights held against the state; they provide a minimal modern consensus on certain nearly universal protections against the state.<sup>8</sup> These rights, in my view, could be construed to be universal, having cross-cultural viability.

On the other hand, however, there is a danger of imposing one's own values and beliefs onto others, which can lead to cultural imperialism and suppression of local traditions and customs.<sup>9</sup> From my perspective, 'reality' or 'truth' can be understood as a social construct, influenced by various social and contextual factors.<sup>10</sup> As a result, human rights cannot be considered to be absolutely universal because their veracity may be contingent on several factors. If implemented, a universal regime of human rights would tend to create a favourable environment for cultural divergence to spread into homogeneity.<sup>11</sup> This position, however, runs counter to the principles and goals of organizations like the United Nations Educational, Scientific, and Cultural Organization (UNESCO), which serve as counterpoints in highlighting

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<sup>3</sup> Nhina Le, 'Are Human Rights Universal or Culturally Relative?' (2016) 28(2) *Peace Review: A Journal of Social Justice* 203

<sup>4</sup> Universal Declaration of Human Rights, article 3

<sup>5</sup> *Ibid* article 1

<sup>6</sup> Bonny Ibhawoh, 'Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse' (2001) 19(1) *Netherlands Quarterly of Human Rights* 43

<sup>7</sup> Universal Declaration of Human Rights, articles 3, 5

<sup>8</sup> Jack Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6(4) *Human Rights Quarterly* 415

<sup>9</sup> *Ibid* 400

<sup>10</sup> James R Scarritt and Claude E Welch, 'Human Rights in Africa: Present Realities, Future Prospects' (1985) 32(2) *Africa Today* 105

<sup>11</sup> *Ibid*

the crucial value of cultural diversity as a means of successful cooperation and coexistence of international human rights.<sup>12</sup> It is posited that some leeway needs to be left to accommodate cultural variations and adaptations of human rights norms. In other words, I am of the view that context is a necessary component of the legitimacy of various human rights and the claims made on their relative importance.<sup>13</sup>

This article explores this issue (transcultural legitimacy of international human rights) in different human rights contexts and argues that while there are certain values or rights that can be universally applied, others cannot or at least, will take time. Even with the former, the implementation of those values must be done with sensitivity and respect for cultural diversity. Thus, the idea of absolute universality of human rights, in my view, remains a myth.<sup>14</sup> Some aspects of international human rights are universal and consequently have transcultural legitimacy, whilst others are primarily influenced and determined by culture, with the universality of human rights and human nature acting as a check on any potential excesses of relativism.<sup>15</sup>

Thus, while the critique of the universal nature of human rights to a large extent has some merit, its justification is not absolute, in that, despite cultural differences influencing the understanding of the concept of human rights by a people, some aspects of human rights are universal, capturing cross-cultural legitimacy. Human rights are both universal (some can be relocated into other cultures different from those of their origin without friction) and culturally relative (an attempt to relocate certain rights into cultures different from that of the West could be problematic).

It's more of a need to know where to draw the balance than to forcefully seek to make all human rights universal.

What at all are "human rights"? Is the meaning associated with the phrase definite, or can it be legitimately subjected to a range of interpretations without losing its core essence or meaning? Who or what institution determines what constitutes human rights? To what extent is it morally and ethically acceptable to enforce human rights laws in societies and cultures that do not recognize them? How do human rights work? Are human rights influenced by the peculiar customs and traditions of a people or place, or are they the same or viable everywhere? How much cultural diversity can the new global human rights system accept in order to give it cultural validity in different societies? Does the Universal Declaration of Human Rights (UDHR) represent the cultural imperialism of the West? And if it does, can it be reconciled with the cultural atmosphere of foreign jurisdictions like Africa, Asia, and others?

The many international human rights treaties, especially the United Nations instruments on human rights, which declare their contents to be universal, inalienable, and cross-culturally legitimate despite clearly having been influenced by the West in their formulation, serve as a starting point for these discussions.<sup>16</sup> These questions and issues, among others, have been the focus of many political and academic discussions since the 1948 creation of the UDHR between "universalists" and "cultural relativists."<sup>17</sup> While there may be contentions regarding the ideological presumption of the universality of human rights principles, there seems to be

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<sup>12</sup> Nsama Jonathan Simuziyya, 'Universal Human Rights vs Cultural and Religious Variations: An African Perspective' (2021) 8(1) Cogent Arts and Humanities 38

<sup>13</sup> *Ibid* (n4) 49

<sup>14</sup> Ronald Cohen, Goran Hyden and Winston P Nagan (eds), *Human Rights and Governance in Africa* (University Press of Florida 1993) 13

<sup>15</sup> Onuma Yasuaki, 'In Quest of Intercivilizational Human Rights: "Universal" vs "Relative" Human Rights Viewed from an Asian Perspective' (2000) 1(1) *Asia-Pacific Journal on Human Rights and the Law* 54

<sup>16</sup> *Ibid* (n2)

<sup>17</sup> *Ibid*

more consensus regarding the idea that with the introduction of the UDHR in 1948, some human rights concepts have assumed universal validity.<sup>18</sup> However, even this supposition has its detractors.<sup>19</sup> The American Anthropological Association is perhaps the most well-known of these, having stated in its frequently quoted response to the draft proposal for the Universal Declaration of Human Rights in 1947 that:

“Standards and values are relative to the culture from which they derive ... such that what is held to be a human right in one society may be regarded as antisocial by another people ... If the Universal Declaration must be of worldwide applicability, it must embrace and recognize the validity of many different ways of life... The rights of man ... cannot be circumscribed by the standard of any single culture or be dictated by the aspirations of any single people.<sup>20</sup>

The conflict between "individualist" theorists, who place the individual above the community in their understanding of human rights, and "collectivist" theorists, who position the community above the individual, is also implicit in this discussion.<sup>21</sup>

By definition, "human rights" are founded on the equality of all people in their inherent dignity. "Dignity" refers to the universal ideal that all people have the right to be treated with respect, seen as ends rather than means, acknowledged as having equal worth, and given the opportunity to develop their talents.<sup>22</sup> These viewpoints serve as the basis for human rights claims.<sup>23</sup> Although this definition seems universally applicable, it is not safe to assume that the international human rights regime is stable and uncontentious because certain aspects of these rights are irreconcilable with the cultural climate of other jurisdictions.<sup>24</sup> Many people who disagree with arguments for the cultural relativism of human rights are concerned that such a position condones or even endorses practices such as female genital mutilation, the subjection of women and minority groups, random deaths, torture, and trials by torture.<sup>25</sup>

Furthermore, it is feared that accepting the cultural relativity of human rights will weaken the entire movement for universal human rights.<sup>26</sup> The conflict between the theory of cultural relativism and international human rights has mostly been influenced by these anxieties. However, this article suggests that universalism and cultural relativism can coexist without causing harm and lead to fresh perspectives, bolstering international and local initiatives to advance human rights.<sup>27</sup>

According to some authors, a distinction must be drawn between the moral standards of human dignity, which all cultures share, and human rights, which are enforceable by individuals against the state, even though the broadly defined humanistic values that the concept of human rights is founded upon may be universally shared.<sup>28</sup>

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<sup>18</sup> Albert Tevoedjre, *Human Rights and Democracy in Africa* (United Nations University Press 1986) 8

<sup>19</sup> *Ibid*

<sup>20</sup> Executive Board of the American Anthropological Association, 'Statement on Human Rights' (1947) 49(4) *American Anthropologist* 539

<sup>21</sup> *Ibid* (n6)

<sup>22</sup> Bonny Ibhawoh, 'Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse' (2001) 19(1) *Netherlands Quarterly of Human Rights* 48

<sup>23</sup> *Ibid* (n1)

<sup>24</sup> *Ibid*

<sup>25</sup> Makau Wa Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Rights and Duties' (1995) 35(2) *Virginia Journal of International Law* 341

<sup>26</sup> *Ibid* (n16)

<sup>27</sup> *Ibid* (n1)

<sup>28</sup> Rhoda E Howard-Hassmann, *Human Rights in Commonwealth Africa* (Rowman & Littlefield 1986) 19

This article concurs with Bassam Tibi's perspective that many scholars tend to conflate "human rights" and "human dignity."<sup>29</sup> He claims that if one is talking about the latter, there is no question that many traditional non-Western civilizations have fully formed ideas of human dignity, and in that sense, it will not be wrong to say that human rights are universal or cross-culturally legitimate. However, the modern understanding of human rights, which derives from the contemporary articulation of legal entitlements that people hold in relation to the state, is, to a high extent, influenced by the customs, culture, and traditional setting of a people.<sup>30</sup> James Nickel also comes to a similar conclusion in his theoretical investigation of the idea of human rights, namely that, while the assertions of human rights' universality and inalienability are feasible for some particular rights, they are not true for a large number of other rights.<sup>31</sup>

And to this end, it can be argued that different civilizations and societies within diverse social and historical contexts have developed distinctive perspectives toward the idea of human worth, human dignity, or human rights. Thus, the conception of human rights by Third World or non-Western societies and that of the West do not only differ philosophically but also conflict with each other.<sup>32</sup> While Western conceptions are based on the idea of the autonomous individual, many non-Western conceptions are not aware of such individualism. The community-based nature of human rights and obligations, as well as economic and social rights and the relative nature of human rights, are all, given more weight in Third World traditions, like Africa and Asia.<sup>33</sup>

When information about a proposed UDHR reached the American Anthropological Association in June 1947, the executive board of that organization issued a letter to the Human Rights Commission asserting that the UDHR document could not be a statement of rights conceived solely in terms of values prevalent in Western European and American countries.<sup>34</sup> The Declaration's universality was challenged on several grounds.

First, as Jack Donnelly and Mary Glendon have pointed out, many involved in the creation of the UDHR were cosmopolitans with international experiences and certain unique social privileges.<sup>35</sup> Their perspectives did not resonate with the concerns and problems of common people and because cosmopolitans and ordinary people do not live in the same world, their perception and implementation of human rights are thus radically different.<sup>36</sup>

Second, national governments oppose international norms that they view to be incompatible with local cultural and social values or domestic political goals.<sup>37</sup> As a result, the international human rights regime cannot compel countries to change their human rights practices.<sup>38</sup> In fact, the international human rights framework includes two human rights covenants: The International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.<sup>39</sup> During the Cold War, the Soviets and non-Western groups had a predilection for the first covenant, while the US subscribed to the second.<sup>40</sup> The

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<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*

<sup>31</sup> James Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (University of California Press 1987) 44

<sup>32</sup> *Ibid* (n8) 46

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid* (n1) 203

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*

<sup>39</sup> Albert Tevoedjre, *Human Rights and Democracy in Africa* (United Nations University Press 1986) 8

<sup>40</sup> *Ibid* (n1) 203

divide between non-Western and Western views on human rights remains in today's world politics. Governments around the world continue to utilize this contradiction to justify focusing on only a subset of globally recognized human rights.<sup>41</sup> East Asian policymakers, for example, say that the right to development takes precedence over other rights and is the most culturally appropriate means to further all human rights in their own countries.<sup>42</sup> As a result, the best approach for the region to meet its human rights obligations is to prioritize development, even if that involves curbing political and civil rights.<sup>43</sup> In contrast, the United States emphasizes political and civil rights while opposing socioeconomic rights out of concern that these rights will undermine commercial rivalry, impose on autonomy, and limit freedom of speech.<sup>44</sup>

Third, a cluster of the rights recognized by the UDHR, such as the right to private ownership of the means of production, equality, marriage, and religious freedoms, contradict customary practices and customs in non-Western communities.<sup>45</sup> These societies have clearly not adopted rights, instruments or the language of rights as defined in the UDHR. As a result, non-Western rule-makers may regard certain rights as an intrusion or imposition of Western culture in their domestic setting.<sup>46</sup> A right to private ownership of the means of production, for example, is incompatible with the preservation of a village society in which families have merely rights of use to communally owned property; permitting people to opt-out and fully own their land would destroy the traditional system.<sup>47</sup> Similarly, but less dramatically, full religious freedom, including the right to apostasy, is irreconcilable with many well-established traditional Islamic doctrines.<sup>48</sup>

Fourth, the human rights narrative and practice reflect Western ideas that prioritize the individual over everything else. Consequently, non-western belief and value systems that see the person as a member of something larger than oneself, such as families and social or communal groups, are lacking.<sup>49</sup> The emphasis on equality and non-discrimination, for example, especially in articles 1 and 2 of the UDHR represents a fundamentally individualistic modern vision of man, state, and society.<sup>50</sup> Individuals with autonomy are easily perceived as essentially equal. However, in a traditional non-western society, basic equality is likely to be an inconsistent or confusing concept in which people are defined by ascriptive attributes such as birth, age, or sex.<sup>51</sup>

Furthermore, article 12 of the UDHR is particularly modern in that it recognizes a limited right to privacy.<sup>52</sup> Privacy is very important to the reasonably autonomous individual since it helps to protect his individuality. It is, however, inherently foreign to ancient, communitarian societies, as seen by the etymological relationship between privacy and privation in English.<sup>53</sup>

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<sup>41</sup> Kofi Oteng Kuffuor, 'The Origin of the African Human Rights System' in Kofi Oteng Kuffuor (ed), *The African Human Rights System* (Palgrave Macmillan 2010) 32

<sup>42</sup> *Ibid* (n1) 204

<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid* (n1) 204

<sup>45</sup> *Ibid* (n40)

<sup>46</sup> *Ibid*

<sup>47</sup> Victor T Levine, 'African Patrimonial Regimes in Comparative Perspective' (1980) 18 *Journal of Modern African Studies* 672

<sup>48</sup> *Ibid*

<sup>49</sup> Virginia A Leary, 'The Asian Region and the International Human Rights Movement' in Claude E Welch and Virginia A Leary (eds), *Asian Perspectives on Human Rights* (Boulder 1990) 13

<sup>50</sup> Jack Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6(4) *Human Rights Quarterly* 415

<sup>51</sup> *Ibid*

<sup>52</sup> UDHR article 12

<sup>53</sup> *Ibid* (n48)

Again, articles 13, 14, and 15, which recognize rights to freedom of movement, asylum, and nationality, are also fundamental in the rather fluid, individualistic modern world, but would likely appear strange, at least as fundamental rights, in most traditional civilizations.<sup>54</sup> Article 16 of the UDHR, which deals with the right to marry and start a family, is somewhat universally applicable.<sup>55</sup> However, the condition of "free and full consent of the intending spouses" shows a particularly modern view of marriage as a union of individuals rather than a connection of lineages.<sup>56</sup> Some customary practices, such as bride price, provide alternative protections for women as well as a kind of indirect conditionality to marriage that meets at least some of the fundamental concerns of Article 16(2).<sup>57</sup> Such considerations make it much easier to accept cultural relativity in this regard.

Several of the mentioned rights resemble specifications at the level of form when we look at the considerably more comprehensive International Human Rights Covenants.<sup>58</sup> For instance, the International Covenant on Civil and Political Rights, article 10(2)(b) mandates the isolation of juvenile offenders.<sup>59</sup> Nonetheless, the idea of a minor criminal defendant does not exist in many cultures.<sup>60</sup> Penitentiary systems, which are also culturally distinctive institutions, are referenced in Article 10(3).<sup>61</sup> Also, virtually all societies permit individual ownership of at least some goods, so the right to private property, as articulated in article 17, has some universal validity. However, in the modern sense of a right to individual ownership of the means of production, it is evidently only appropriate in economies with a significant capitalist sector and would not resonate with strictly socialist and communist societies like Cuba, China, Vietnam, and North Korea.

Again, in powerful traditional societies, founded on community, the applicability of civil rights like freedom of conscience, speech, and association may not be a priority because these rights presuppose the existence and favourable assessment of relatively autonomous individuals.<sup>62</sup> Regardless, there would hardly ever be a problem in such societies; members of such a community simply won't have the need or want to assert such civil rights if traditional practices are really founded on and preserve culturally accepted notions of human dignity.<sup>63</sup> Interestingly, by making human rights more socially focused and by challenging the individualism that has typified Western human rights rhetoric, the developing world left its mark on human rights theory in the 1990s.<sup>64</sup> This movement has been largely driven by the claims that the idea and interpretation of human rights are culturally relative to "Asian values," and more recently, "African values."<sup>65</sup>

It appears self-defeating and contradictory for a liberal ideology—the universal doctrine of human rights—to champion self-determination and freedom of choice while simultaneously justifying pressure on states to adopt liberal values. This contradiction is particularly evident in instances such as Western nations threatening to cut aid to developing countries that refuse to implement certain democratic reforms or human rights protections.<sup>66</sup> There is a prevailing

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<sup>54</sup> *Ibid* (34) 416

<sup>55</sup> *Ibid* (36) article 16

<sup>56</sup> *Ibid* article 16(2)

<sup>57</sup> *Ibid* (34) 418

<sup>58</sup> *Ibid*

<sup>59</sup> ICCPR article 10(2)(b)

<sup>60</sup> *Ibid* (n49)

<sup>61</sup> ICCPR article 10(3)

<sup>62</sup> Rhoda E Howard-Hassman, *Human Rights in Commonwealth Africa* (Rowman & Littlefield 1986) 19

<sup>63</sup> *Ibid*

<sup>64</sup> *Ibid* (n18) 49

<sup>65</sup> Bilahari Kausikan, 'Asia's Different Standard' (1993) 92 *Foreign Policy* 24

<sup>66</sup> John-Jean B Barya, 'The New Political Conditionalities of Aid: An Independent View from Africa' (1993) 24(1) *IDS Bulletin* 16

argument among universalists that, looking back in history, all human communities have changed their cultures, religions, or other value systems throughout time and that, if one chooses a specific religion or culture of a nation at a specific period and claims that it must be respected at all costs, one is putting a certain relativity on an absolute perspective, ignoring historical changes that occur in any nation.<sup>67</sup> While it is important to reject discriminatory views, it must be acknowledged that a society may not be prepared to adopt certain human rights practices until such values are considered culturally and socially imperative. In such cases, attempts to impose foreign values or a specific way of life in the name of universal human rights can be perceived as a form of cultural imperialism. Prematurely implementing these rights in jurisdictions where the societal framework is not yet ready for their acceptance can lead to confusion, instability, and potential identity crises. It should be recognized that many human rights, once controversial or even illegal in Western societies, have only been recognized through shifts in social circumstances. Given the diverse customs and traditions across societies, jurisdictions should be afforded autonomy to determine what constitutes human rights within their cultural contexts. External intervention should be considered only when there are violations such as abuse of power or torture, or when actions have a demonstrably harmful impact on the population.

Most Africans, for instance, believe that the human rights movement promotes a rationalist universalism that is firmly rooted in Enlightenment philosophy.<sup>68</sup> Due to this, the endeavour now looks to be a type of European ethnocentrism, and as a result, it serves as a form of dominance rather than emancipation.<sup>69</sup> It is assumed that people can only fully develop when they are concerned about how their actions may affect other people. The predominant African understanding of human rights thus incorporates a system of rights and obligations that offers social cohesion and viability, in contrast to the Western conception of rights, which conceptualizes rights in terms of abstract individualism without accompanying duties; this is what Makau Wa Mutua describes as the 'African cultural fingerprint'.<sup>70</sup> He argues that a general definition of human rights that are universally accepted may not be realistic or even desirable because it might neglect the particular interests of some communities, whose concerns might not support a universal approach.<sup>71</sup> African values are distinct in character, not in degree; they are based on reciprocal obligation rather than the strict text of the law; they are independent yet communitarian rather than individualistic.<sup>72</sup> In this context, rights are defined to include, but not be limited to, the right to political representation, which is frequently secured by the family, generational groups, and clan. The society evolves a few key social characteristics that tend to encourage the promotion of both individual and community rights. These include respect for elders, dedication to one's family and community, and cooperation with other community members.<sup>73</sup> In addition to emphasizing groupness, sameness, and commonality, the prevalent social orientations towards rights also placed an emphasis on a sense of cooperation, interdependence, and communal responsibility.<sup>74</sup> Although cultural relativism has

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<sup>67</sup> Onuma Yasuaki, 'In Quest of Intercivilizational Human Rights: Universal vs Relative Human Rights Viewed from an Asian Perspective' (2000) 1(1) *Asia-Pacific Journal on Human Rights and the Law* 72

<sup>68</sup> John Kampfner, *Freedom for Sale: How We Made Money and Lost Our Liberty* (Simon and Schuster 2009) 12

<sup>69</sup> *Ibid*

<sup>70</sup> El-Olaïd Ahmed El-Obaid and Kwadwo Appiagyei-Atua, 'Human Rights in Africa: A New Perspective on Linking the Past to the Present' (1996) 41 *McGill Law Journal* 819

<sup>71</sup> Nsama Jonathan Simuziya, 'Universal Human Rights vs Cultural and Religious Variations: An African Perspective' (2021) 8(1) *Cogent Arts and Humanities* 37

<sup>72</sup> Adamantia Pollis, 'Cultural Relativism Revisited: Through a State Prism' (1996) 18(2) *Human Rights Quarterly* 321

<sup>73</sup> Makau Wa Mutua, 'Limitations on Religious Rights: Problematizing Religious Freedom in the African Context' (1999) 5 *Buffalo Human Rights Law Review* 75

<sup>74</sup> *Ibid*

potential issues that could lead to the violation of human rights under the guise of conserving cultural values, universalism also has a tendency to favour hegemonic politics, whereby Western powers undermine the legitimacy of traditional systems of law.<sup>75</sup>

Again, for another example, many families in Asia and Africa have the legal right to use communally owned land but do not have the right to own it, unlike in the West.<sup>76</sup> These regions' policymakers and industrialists utilize the land for Urbanization projects and implement the right of private ownership. However, they fail to recognize that communally owned lands serve as places where people cultivate a sense of community.<sup>77</sup> Politics and future development are not possible without social ties. In other words, fast urbanization and carelessly enforcing the right to private property ownership could erode current cultural norms and lead to confrontations between communities, the government, and the market.<sup>78</sup>

### 3. Conclusion

In conclusion, Kofi Quashigah's viewpoint is compelling, and this analysis supports his argument that some fundamental needs are "indisputably universally ascribable to persons of every historical, geographical, and cultural background."<sup>79</sup> However, cultural relativism is also a fact and reality in human rights discourse, and differences in cultural and ethical perspectives inevitably affect how people view their rights and obligations.<sup>80</sup> Arguments for cultural relativism in human rights are thus valuable to the extent that they draw attention to the importance of cross-cultural understanding and tolerance of diversity.<sup>81</sup> For this reason, cultural variations may allow for some exceptions to the principles of universal human rights. But rather than serving as a justification for arbitrary authority, despotism and oppression, cultural relativism must serve as an expression of and guarantee of local self-determination.<sup>82</sup> Cultural deviation from universal human rights standards must be established on a legitimate cultural basis with suitable alternative constitutional and other legal provisions to safeguard basic human dignity, where cultural orientations themselves fall short of these standards.<sup>83</sup> There is still an urgent need to acquire a broader perspective on human rights that incorporates different concepts and moral experiences. Once the presence of human plurality is recognized, understood, and accepted, it will be simpler to achieve some harmony around the world under a certain human rights framework.<sup>84</sup> Greater cross-cultural understanding, it is hoped, will throw light on a common core of globally acceptable rights. Societies should culturally and socially evolve into accepting rights in their domestic system; Human rights shouldn't be imposed on them, because that could collapse an entire civilization.<sup>85</sup> Exceptions can only be made when this allowance is used as an avenue to abuse power or foster arbitrary or despotic rule.

<sup>75</sup> JJosiah A M Cobbah, 'African Values and the Human Rights Debate: An African Perspective' (1987) 9(3) Human Rights Quarterly 309

<sup>76</sup> Vine VTL, 'African Patrimonial Régimes in Comparative Perspective' (1980) 18 Journal of Modern African Studies 657

<sup>77</sup> Keba M'Baye, 'Organisation de l'Unité Africaine' in Les Dimensions Internationales des Droits de l'Homme (Societe de Legislation Companece 1987) 651

<sup>78</sup> *Ibid*

<sup>79</sup> Kofi Quashigah, 'The Philosophical Basis of Human Rights and its Relation to Africa' (1991) 1(3) Journal of Human Rights Law and Practice 7

<sup>80</sup> *Ibid* (n40) 61

<sup>81</sup> *Ibid*

<sup>82</sup> *Ibid*

<sup>83</sup> Julius Nyerere, 'Stability and Change in Africa' (1969) 2 Africa Contemporary Record 31

<sup>84</sup> Raimundo Panakker, 'Is the Notion of Human Rights a Western Concept?' (1982) 120 Diogenes 75

<sup>85</sup> Alison Dundes Renteln, 'The Unanswered Challenge of Relativism and the Consequences for Human Rights' (1985) 7(4) Human Rights Quarterly 540