Don’t be Universal; Be human!

Clash between Universalism and Relativism as an obstacle in protection of Human rights

Master’s thesis

Jakub Popik

EMA

European Master’s Degree in Human Rights and Democratization

2015/2016

EIUC, Human Rights Village, Riviera San Nicolo

Thesis advisor: Mgr. Pavel Dufek, Ph.D, Masaryk University, Brno

Table of content

Abstract

The ongoing academic debate between Universalism and Relativism has had negative effect on implementation of human rights into practice and causes human rights to be less accepted within the human society.

This thesis critically analyses both of these notions and discovers their flaws that have the biggest negative effects on human rights protection. Human rights violations are in the next chapters examined on the background of modern political trends, societal tendencies, but also on the background of opposing academic arguments within this debate. The goal of the thesis is disregarding the ongoing debate as outdated, irrelevant and provide an alternative for improvement.

Resulting from this analysis, the thesis provides a new conception, formed on a revision of universalism and relativism, with the fundamental values of human rights in regard. The newly established theory shall expresses the capability to implement human rights acceptance in the modern society, a trait necessary for human rights to be effective in practice.

Introduction

The Human Rights sphere is a very complex one. Human rights are being discussed more and more since the late 20th century and this discussion is dynamically changing with new streams of political and academic thoughts. As with any other general stream of thought, interpretations may vary based on the different backgrounds of the interpreters. Because of the resulting sub-streams, the formal authority of the main point gets weakened.

Human rights as the main stream of thought in question, have also been interpreted based on different academic, political & societal backgrounds. As a result, two main ideas about the perception and application of Human rights were established with the main difference lying in the dispute between supranational application of Human rights and subsidiar form of application with states' interpretative freedom. Universal view on the Human rights claims equal application in all countries, but relativism claims that the application process of Human rights should be based on traditions, legal history, religious differences and overall social background. Both of these notions will be explained more thoroughly in this study, but by naming them at the beginning of the thesis, this clash in thought needs to be put as the root for major flaws in the current Human rights' protection system. As long as this dispute continues, one cannot speak about equal human rights in practice, since justifiable acts in one country are often perceived as grave human rights violations in another country.

In the contemporary world, human rights are legalized by the acts of international law in forms of declarations, precedent setting international human rights courts' rulings and others.These are later supposed to be implemented by signatory countries into their legal systems. However, in international law, Human rights are mostly not implemented in the form of *ius cogens* therefore are not generally and globally enforceable.Human rights are currently perceived as legal and moral principles of the international community, yet, in the name of state sovereignty protection, the margins for application are set rather wide for signatory countries. This lack of global legal enforceability creates different levels of application based on different states' policies and backgrounds. As a result, human rights are applied differently in the world and that

clearly undermines the very fabric of human rights- equality. Unequal distribution of human rights protection creates severe injustices, often for the most legally unprotected groups. As Martin Luther King said: "*Injustice somewhere is a threat to justice everywhere*". Human rights violations somewhere are a threat to human rights enjoyment everywhere.

Realization of the seriousness of the aforementioned quote became the main reason why to conduct this study and maybe find a solution for the dispute between universalistic and relativistic view. How can something so abstract as an academic debate in the highest circles have such an effect on the actual protection of human rights in certain cases? At this point (even after myself attending the 32nd session of the United nations Human Rights Council in Geneva) the differences between countries in matters of the majority of universal regulations lead to reservations to universal regulations and those lead to unequal protection in human rights.

Therefore, establishing the goal of this thesis was obvious: to find a solution in the academic sphere where the main discussion between universalism and relativism is present, by analyzing the flaws of both of these views, their practical disadvantages and the obstacles both of them create towards the protection of human rights. Analyzing these views critically, with rational deconstruction of their shortcomings will during the course of this paper ultimately result in a new stream of thought- one that will merge the best of both previous notions about human rights and will provide the basis for improved protection of human rights. The final "concept" will try to focus on the most important thing- improvement of human rights in the life of an individual.

As far as limitations of the paper, the extent of this study forbid the author to include many other relevant fields of study and their expert point of view that would be necessary to deal with the complexity of the issue at hand.

The necessary implication of this limitation is the author's disproportionate knowledge in fields relevant to this issue.It is impossible even to name all the factors that are presented as obstacles for human rights implementation. Some academic fields such as anthropology or psychology of values would also have more extensive insight in this particular topic, since the relativistic point of view basis its arguments mostly on

cultural and societal differences that cannot be expressed in legal terms or on the background of the contemporary (western) world. The extent of this paper cannot therefore cover all relevant fields necessary to completely understand and resolve the issue at hand.

Other limitations can lie also in the amount of authors that have made their comment on this issue. While trying to solve an apparently "stuck" discussion, it is necessary to also include ideas that are perceived as a bit unorthodox in order to achieve any progress since the "classical & orthodox" viewpoints (universalism and relativism) are the actual core of the problem. Therefore, combining the necessary classical basis of thought with the current alternative ideas, will result in something unprecedented, since precedented ideas no longer work.

As the last point to the limitations, subjectivity of the author needs to be mentioned. While following the steps of critically analyzing the presented dispute, the academic and theoretical nature of the problem at hand will leave a large space for author's subjective interpretation of the objective truth. However, positive limitation towards author's subjectivity should be provided by the main aim of this thesis: by clearly identifying the negative effects of both viewpoints to ensure the enjoyment of human rights in practice by individuals, which is the author's field of expertise

Thesis questions:

This thesis will try to answer the following questions:

What are the foundations for the notion of Universalism in human rights?

How do the theoretical basis of universalism translate to human rights protection in practice?

Based on practical examples and academic opponents, what are the flaws of universalism?

What are the foundations for the notion of Relativism in human rights?

How is the relativistic theory applied in practice?

Can relativism be universal?

Can the universalistic approach remain as application theory for human rights in the contemporary world?
What are the disadvantages of both of these notions for the human rights protection?

With many question to be answered, some more may arise during the course of this paper. However, the most important questions are:

How can the flaws of these notions be improved on a theoretical base?
If there is an improvement on theoretical basis, how can it translate to practice?

Answering these two questions is the main goal of the thesis. Discovering the fundamental flaws in the current theory in human rights can lead to their improved protection in practice. Therefore, the end contribution of this thesis is only marginally theoretical. The aim of this study is to improve the human rights protection in individual cases by eliminating negative effects of dissenting academic and political approaches towards human rights.

Chapter 1. Theoretical introduction

As the thesis states at the beginning, the concerned topic here is human rights. Human rights are perceived as *fundamental norms of freedom, justice and peace*[1] and are a widely referenced concept throughout the world. Cases of legal obstructions, general failure of the rule of law, even economical and environmental issues have a base in human rights claims. Human rights are being implemented into talks throughout the whole societal and political spectrum. Therefore, it is necessary to deconstruct the term "human rights" as no longer just a legal reference to "rights", which makes the issue of a solely legal character. Understanding of the true character of human rights as an inter-disciplinary issue is vital for further research.

"Human rights" therefore don't carry only the legal weight prescribed in international and regional provisions, but need to be also examined by the same fields of study as "humans" are: sociology, anthropology, psychology of values, even fields like religious studies and biology are relevant among many others.

However, the essence of human rights themselves is not under a lot of debate, relevant to this paper is a debate between two apparently opposing notions: one that understands human rights as a global concept where their application should be universal- equal globally, where the other view is based on the notion of inevitable cultural differences. This represents the clash mentioned in the heading of this paper.

The obvious observation from these notions is that one completely contradicts the other. Isn't the obvious meaning of "universalism" universality? How can human rights proclaim to be universal when there is a theory directly disregarding the notion of universality?

Relativists see the world as various groups of peoples, cultures, religions based on the values they protect and express by their political will and common aspirations. Can there be united acceptance of human rights based on the aforementioned differences?

1.1.1 Theoretical introduction to Universalism

Universalism is one of two disputed notions concerned in this study. To discover the flaws of it, it needs to be deconstructed to fundamentals and it needs to be confronted by opposing views.

[1] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 29 Jun. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

Therefore, in the structure of the coming chapters, critical analysis will be applied, where after presenting the core principles of Universalism, dissenting opinions of other scholars and also subjective reservations will be provided and in the end, merge into a coherent stream of thought.

The theoretical basis for Universalism are described by many authors, however, the core principles are mostly agreed upon amongst the political and legal scholars. Notions of universalism state that "*human rights are inalienable, self-evident and applicable to all human beings"*[2]. By pointing out the applicability to all human beings universalism implies equality, which has it's basis in liberal philosophies such as John Locke[3], and was later implemented into political will during the revolutionary period at the end of the 18th century.

However, as will be explained in following chapters, the ideas supporting universal values came from cultures developing democracy and individualistic values as a reaction to precious oppressions by the rulers during the time of absolute power of the colonizing countries. These values at that time seemed incomprehensive for cultures others than societies that later formed the "western values". Therefore in my personal critique of aforementioned facts, the separation of the liberal individualistic values from the traditional acceptance of society during the late 1700s is being undermined as an illegitimate source for the universality of human rights.

As a counter argument to this critique comes the argument of universalism that deems human rights as "*pre-political, thus unchangeable and unaffected by cultural or political variation*"[4]

Argument of "pre-political" character of human rights supports the previously mentioned argument of self-evidence of human rights, where their existence is independent from political will. However, this argument poses the significance of the Universal Declaration of Human

[2] Donnelly, Jack. "Cultural relativism and universal human rights." *Human Rights Quarterly* 6.4 (1984): 400-419.
[3] Langlois, Anthony J. "Normative and theoretical foundations of human rights." *Human rights: Politics and practice* (2009): 11-25.
[4] Donnelly, Jack. "Cultural relativism and universal human rights." *Human Rights Quarterly* 6.4 (1984): 400-419.

Rights as only a scripted version of their existence, not an establishment of human rights as a whole. Universal Declaration of Human Rights became the basis for *"contemporary consensus on internationally recognised human rights"*[5] . Therefore, this document is perceived by scholars not as the legal foundation for human rights primarily, but as a way to achieve political consensus by its signatory countries. Universal values of human rights are implied in the Universal Declaration, signed by the signatory countries as an agreement to their world-wide adaptation.

Based on the previous paragraph, signatory countries of the Universal Declaration of Human Rights acknowledged the pre-political character of human rights, however, because the states are the primary duty bearers in adoption of human rights, human rights became politicized. With wide margin of appreciation for the states to implement their human rights obligation in national legal systems, the exact ways of implementation are in the hands of a political discussion of the governing apparatus of a particular state.

It would be harsh to say that human rights were non-existent until the signing of the Universal declaration of Human rights, since political rights were being granted to people in some form since the ancient Greece. However, human rights in their essence are universal, therefore, when some groups of people were not perceived worthy to be granted these rights (such as the slaves, minorities, often women), we cannot speak about universality of human rights. Universal Declaration of Human Rights was therefore not meant as a legal establishment of human rights, rather as previously mentioned, as a platform for political discussion that would lead to their universal adaptation.

[5] Donnelly, Jack. *Universal human rights in theory and practice*. Cornell University Press, 2013.

1.1.2 Negatives of Universalism

Critiques of universalism are based on variety of basis because of the variety of the shortcomings of universalist theory. In critical analysis of a notion that leads to the improvement of the notion itself, we must look at the theoretical faults with the biggest impacts when put into practice.

As previously mentioned, human rights were not a mainstream thought before the signing of the Universal Declaration of Human Rights. After the signing of the UDHR in 1948, on the background of the unfolding Cold War, the debate between universalism and relativism became a debate between Western democracies that promoted political and civil freedoms and the Eastern values, that were based on social and cultural rights. Inevitably, during the Cold War, a lot of misconception and political propaganda caused differentiations from the values of the UDHR which were being proclaimed as the values of the West, rather as the values of the globe. Therefore, human rights debate and also their protection became a highly political debate. Even though this distinction based on the sides of the COld War ended with the fall of the Soviet Union in 1989, still the argument of human rights as the values of the West still prevails as an argument for the relativists. Now, the primary debate between universalists and relativists happens based in "*an economic context between developed and less-developed countries, or alternatively in a religious context between West and Islam.*" [6]

Yes, current debate of human rights can be seen at the background of economic growth, but differences in human rights protection do not necessarily correlate directly with economic pre-dispositions. In the report of the Human Freedom Index[7], where countries are ranked based on civil, political, personal and economic freedom, the United States of America as one of the

[6] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 29 Jun. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

[7] "Human Freedom Index | Cato Institute." 2015. 29 Jun. 2016 <http://www.cato.org/human-freedom-index>

world's leading economic powers landed on the 20th place behind less developed countries such as Malta (16) or Chile (18). China as one of the biggest economies in the world landed on the 132nd place. Therefore it is visible that economic growth is not necessarily correlated directly to rise of human rights protection and enjoyment of civil liberties.

As an aftermath of the Cold War argument, some of the scholars inclining towards relativism argued, that human rights are a tool for Western imperialism and that external action in human rights protection is a "*mask for Western interests"*[8]. During the Cold War, the West supported regimes that were infamous for human rights violations such as Mobutu, Moi, Sellassie[9].

Some scholars take the argument even further and support relativism by calling human rights a "shallow rhetoric disguising the promotion of US interests[10]. As a fairly recent viewpoint, this reacted to some of the questionable US foreign policies in the middle East, where during the 2003 invasion to Iraq, democracy and human rights protection were the direct cause for further human rights violations in practice and civilians were the victims of an action claiming the protection of civilians. This gave a rise to the "imperialistic" view of human rights. Undermining sovereignty within foreign countries in the name of human rights is, in my opinion, the purpose of human rights as the equal protector of human dignity and freedom should not be bound by political borders. Even claiming human rights protection as means for carrying out state's agendas can serve as an instrument of diplomacy and should not be forsaken if applied equal in all cases. However, in the case of the USA, which failed to promote human rights in other countries that it is present in, such as Kuwait, human rights were used as mere propagandistic reasoning for initiating cooperation between those two countries. Based on a quote mentioned at the beginning of this paper from M.L.King *Injustice somewhere is threat to justice everywhere*, and equality being one of the main pillars of human rights, it is understandable that the USA are labelled as neo-imperialists. Human rights are apparently not a

[8] Rengger, Nicholas. "The world turned upside down? Human rights and International Relations after 25 years." *International Affairs* 87.5 (2011): 1159-1178.
[9] Adar, Korwa G. "The Wilsonian Conception of Democracy and Human Rights: A Retrospective and Prospecti." (1998).
[10] "The Liberal Virus: Permanent War and the ... - Monthly Review." 2015. 1 Jul. 2016 <http://monthlyreview.org/product/liberal_virus/>

common denominator for all the countries USA promotes human rights in, therefore the sole common denominator for foreign political action in these countries remain the foreign political agendas of the USA, often for profit. The United states reject this criticism regarding both Kuwait and Iraq, claiming that it is "their way"[11]. That seems to be a vague argumentation that justifies millions of lives victimized in the name of human rights protection by the United States.

To argue with these critics, and defending universal nature of the human rights, we need to clarify, that the "interests of the USA" are not the same thing as the "interests of the West" neither can they be interchangeable with "human rights agenda". Human rights agenda is a global concept where "all human beings are born free and equal in dignity and rights."[12] It has no connection to a certain country, and it does not justify human rights violations conducted while carrying out the human rights agenda, nor should it be respected to promote human rights in words and neglect them in practice.

These double standards undermine the equalitarian essence of human rights, and together with the imperialistic argumentation pose a great obstacle for universal human rights implementation. For states promoting human rights it is necessary also to denounce any cooperation with states that violate human rights on regular basis. If these mis-handlings of human rights promotion keep happening in practice, they will keep being the main argument for relativists arguing the very foundations of human rights. This causes for human rights implementation to be stuck on a level of bitter arguments between countries trying to promote human rights beyond their own state territory and countries claiming sovereignty when shortcomings in the US policy are used as the cover argument against the human rights agenda being implemented universally.

[11] Franck, Thomas M. "Are human rights universal." *Foreign Aff.* 80 (2001): 191.
[12] "The Universal Declaration of Human Rights | United Nations." 2015. 1 Jul. 2016 <http://www.un.org/en/universal-declaration-human-rights/>

1.2.1 Theoretical introduction to Relativism

Culturalism has been mentioned in the previous pages, however, it needs to be further explained. To explain relativism it is necessary to analyse it on the background of previously mentioned universal notion of human rights and the differences it has.

Relativism, or cultural relativism, is a concept, that basis its perception of human rights in the fact, that they are not applicable to all cultures. Human rights are argued to have developed from Western culture and thus they are inappropriate in application to other cultures [13]. Therefore, for cultural relativists, one of the biggest arguments against universalism is that it is against multitude of cultures, which is implied by the previous argument of neo-imperialism of the West. Human rights are therefore presented by the relativist as *values* of the West imposed on the other countries with the assumption that they are necessary for improvement of a particular country.

As an example for counter-arguing this Wester assumption, the case of Asian values is presented as an alternative. The economic boom of a number of East/South-East Asian states is presented by academics and politicians as an argument for a "more authoritative standard of rights, stemming from Asian conservative cultural values" [14].

To comment on these arguments, as seen in the aforementioned research economic growth and human rights application do not always directly relate (seen examples of China and the USA).

Another difference between universalism and relativism lies in the values. While universalism is presented as a scheme of human rights protection that benefits the individual, cultural relativists, human rights are *attached* to communities. This attachment comes from the notion that any legal provisions protect a community based on the values of that particular community, even human rights should be oriented more culturally than globally.

"As such they must of necessity reflect cultural, social and ideological diversities thus ruling out any justification for a single universal set of human rights[15]*"*

This argument may be applied to the current debate about human rights. However, the goal of this thesis is to object every notion of this debate in order to deconstruct it. This argument

[13] Langlois, Anthony J. "Normative and theoretical foundations of human rights." *Human rights: Politics and practice* (2009): 11-25.
[14] Freeman, Michael. *Human rights: an interdisciplinary approach*. Polity, 2011.
[15] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 1 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

therefore, should be contested, based on the fact that human rights are not primarily based on communities. If they were they would be called community rights, not human rights. This wording is not necessarily aimed as humans as individuals, neither is it aimed at communities that are comprised of individuals. Based on the article 1 of the Universal Declaration of Human Rights, where *All human beings are born equal in dignity and rights…* it is not far fetched to claim that human rights are aimed at human beings, therefore a human race, where the universal application does not imply necessarily universality between communities, whatever their foundations may be, but rather an equal opportunity for claim rights based on belonging to a certain biological species.

When human rights protection is contested based on cultural preferences or state policies, human rights become politicised, therefore alienable from the people given to the hands of a cultural authority (religion or state) and it fails to fulfill the character of human rights- equality. As far as the current view on what legal strength human rights have currently, they are set out in various international legal documents that are, as mentioned previously, varying in the level of legal strength, therefore they lack a coherent political thought across the globe. In reality, human rights are mostly viewed as a set of principles rather than a set of laws. The factual difference between principles and laws is apparent mainly in domestic enforceability, however, human rights as principles can retain their true nature as principles without political affiliations. Agendas of a state depend on general elections which ensure dynamic changes in states' agendas. Even cultural preferences may change over time, as cultures rise and diminish affected by the pressures from external actors. However, human rights as a set of principles without any interference from agendas run by people is the only way how to fulfill the real goal of human rights- equality in freedom and dignity without any hierarchical order of human beings in rights protection. To work, principles require free will to be applied from one individual onto another one, therefore lie in certain emotions, such as empathy; laws require fear of sanctions by the state to work.

1.2.2 Criticism of relativism

Although relativism has been introduced in the previous segment. It is however, necessary to point out more negative aspects of this notion and the disadvantages they bring to the table of human rights protection system.

As mentioned previously, a case that has been one of the core arguments against universality of human rights is the case of Asian values (see above). However, how long can this remain the strongest opposing argument? Freeman argues that , using this argument by relativists has served more propagandistic and less factual purposes and that "Asian values is an ideological attempt to justify authoritarian government"[16]. A more appealing argument against Asian values is that these values "*appear to stem almost exclusively from those in power... to see Asian history in terms of a narrow category of authoritarian values does little justice to the rich variety of though in Asian intellectual traditions*"[17]. Therefore, these so-called "Asian values" are often mixed with agendas of the authorities, which is not that much different from the so-called "Western values. Intellectual traditions in Asia translate to certain values presented in the current setting, however, there have always been two sides to the story. Asian philosophers and political thinkers concerned with the topic of human rights have conducted numerous researches on human rights in the Asian culture. One of the main challenges that human rights implementation faces in Asian countries is the Islamic traditions. Islam seems incompatible with human rights in the eyes of many, however, such as Sayyid Abul Ala Maududi argues in his book Human Rights in Islam (1976) that human rights and Islam do not contradict and can be implemented on the background of Islamic traditions. According to Maududi, the division within Islamic stream of thought is caused by fundamentalist and conservative tendencies of

[16] Freeman, Michael. *Human rights: an interdisciplinary approach*. Polity, 2011.
[17] Sen, Amartya. *Development as freedom*. Oxford Paperbacks, 2001.

only a fraction of muslims. Yet, in his book he describes that human rights are not a Western concept but are vulgarised by political agendas[18].

Human rights have no disregard for cultural values that represent the values of the community as a whole (such as communitarian approach to Indigenous peoples' rights that will be presented later in this thesis). However, as many scholars argue, vital parts of some cultures are being under-represented. Women often do not have their viewpoint heard concerning cultural ways, nor do they have a proper political representation. Therefore, cultural values are built on the "*falsely presented a culture of male dominance"*[19]. Although cultures in the world are not homogenous, but cultural values within a singular culture should represent the view of the majority in that culture, rather than only the dominating group.

An opposing view on relativism is presented by Dr. Basnet who holds a Ph.D and an LLM in International human rights law at the University of Lancaster. He claims that "*history is witness to the fact that society and its values change over time,. Every culture is a hybrid from the past and chrysalis for the future"*[20]. However daring this claim may be, it is inevitable that cultures undergo changes over time. Whether affected by internal or external influence, cultures do change. Dr. Basnet argues that globalisation and a global flow of information will force the cultural differences to lose their significance. So can it be argued that relativism itself will subsequently lose its significance? It is impossible to predict the future for certain, however, sign of globalisation are visible in all of the academic fields and all aspects of life. The differences globalisation brings however have very little in common with cultural differences. Cultural differences are slowly transforming into economical differences, where the gape between the poor and the rich is more visible than ever. For Dr. Basnet, cultural differences

[18] BIELEFELDT, H. ""Western" versus "Islamic" Human Rights ... - Syracuse University." 2000. <http://insct.syr.edu/wp-content/uploads/2013/03/Beilefelt.2000.Cultural-Relativism-Critique.pdf>
[19] Phillips, Anne. *Multiculturalism, universalism and the claims of democracy*. United Nations Research Institute for Social Development, 2002.
[20] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 2 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

seem petty and insignificant going forward.[21] The more radical criticism of relativism therefore would be to disregard it whatsoever going forward. Even if such predictions about the future of relativistic perception of human rights shall come true, it would be irresponsible and irrational to disregard the current need for relativism, as it is one of political ways to engage in a conversation with less willing countries to implement human rights at least in some forms. Disregarding the notion now could result in a rise of authoritarian regimes that completely disregard human rights implementation.

One of the supporters of relativistic thinking was an economist Friedrich Hayek that in an interview from the 1970s claimed that

> *"The United States discovered human rights two years ago or five years ago. Suddenly it's the main object and leads to a degree of interference with the policy of other countries which, even if I sympathized with the general aim, I don't think it's in the least justified. People in South Africa have to deal with their own problems, and the idea that you can use external pressure to change people, who after all have built up a civilization of a kind, seems to me morally a very doubtful belief. But it's a dominating belief in the United States now"*[22].

Even though this criticism of universal human rights is again based on the foreign policy practices of the United States, which was disputed in the previous pages,that human rights are not in sole possession of the United States, it states one thing- that these practices are "morally doubtful". As criticism it is viable on the address of the United States and their "morally doubtful" foreign policies.

[21] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 2 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

[22] "The ideology of human rights - The Interpreter." 2010. 2 Jul. 2016 <http://www.lowyinterpreter.org/post/2010/09/10/The-ideology-of-human-rights.aspx>

However, what Friedrich Hayek is implying is policy of "own problems" where a country is responsible for their internal issues since "the people have already built up a civilization of a kind". This notion goes against the foundations of human rights as a whole, and claims that they should be a concern of a national state. But who is going to ensure a proper treatment of citizens of those countries? Again, mentioning the quote of M.L. King "injustice somewhere is a threat to justice everywhere".

If injustices in foreign countries are ignored by the international community, that country is no longer a *de facto* member of the international community as is left outside of it. That leads to a so called "othering". "*Othering refers to social and/or psychological ways in which one group excludes or marginalizes another group"*[23]Identifying with a certain group and empathizing with its struggles creates correlation. The danger of othering however, lies in the creation of "us-them".

"*Whatever the markers of social differentiation that shape the meaning of "us" and "them," whether they are racial, geographic, ethnic, economic or ideological, there is always the danger that they will become the basis for a self-affirmation that depends upon the denigration of the other group."*[24]

If the international community divides between countries that apply human right and "the others" just on basis of cultural relativism, human rights will lose the some fundamental characteristics, such as equality. While branding people living in certain countries as "worthy of human rights protection" and in other countries not to apply any human rights regulations would be close to branding these people as not human or not worthy of a protection that "normal" humans have.

To dispute the notion of relativism on another pertinent argument, is the relationship that universal human rights protection has with the indigenous peoples rights. Due to the limitations of this paper it is impossible to complexly explain this relationship, however, the basis lies in the acknowledgement of rights. Indigenous communities have been the victims

[23] Studies, Post-Colonial. "The Key Concepts." *BILL ASHCROFT, GARETH GRIFFTHS AND HELEN TIFFIN* (2000).
[24] "12_The Other and the Othering." 2015. 2 Jul. 2016 <http://www.forpsicom.uniba.it/public/files/The%20Other%20and%20the%20Othering.pdf>

of human rights violations in many cases, however, their communitarian values prevail to this day even when the violations were often conducted upon individuals. The acknowledgement of rights needs to happen on both sides. The Western policies for sustainable development have acknowledged the differences in values of human rights for indigenous peoples that are outside of the "*materialistic-rational paradigm"*[25]. However, these development policies depend on the indigenous peoples themselves "*to define their own development futures reflecting their own cultural values"*[26]. This implies one thing- that relativism does not necessarily have to go against universal human rights protection. Culture as relative denominator in society cannot however be left outside of the international legal system and needs to engage in a dialogue that would discuss the protection of cultural values in the light of human rights protection.

Chapter 2.1 Human rights disadvantages of the debate between universalism and relativism

In the previous pages, both notions of universalism and relativism came under scrutiny pointing out their negative aspects. This subchapter will reflect on those negative sides and with more of an overview of the debate as a whole on how much do these negative sides affect human rights protection.

Negatives of the debate come in various forms. One of the more disturbing ones is that the more opposing arguments there are against either relativistic views or universalistic views, these are all arguments that undermine the point of human rights. Undermining human rights and their necessity or placement in the world can have catastrophic consequences.

As an example of such consequences is that human rights protection is being put on a hierarchy of values. According to Freeman, there are arguments that "*economic development must precede*

[25] Groenfeldt, David. "The future of indigenous values: cultural relativism in the face of economic development." *Futures* 35.9 (2003): 917-929.
[26] Groenfeldt, David. "The future of indigenous values: cultural relativism in the face of economic development." *Futures* 35.9 (2003): 917-929.

human rights believing that human rights are too expensive and too risky for poor countries"[27]. Economic development is connected to economic, social and cultural rights that are established by the International Covenant on Economic Social and Cultural rights. In this Covenant, signatory countries vow to ensure equal rights of men and women to enjoyment of all economic, social and cultural rights[28]. Therefore, human rights cannot be argued to be an obstacle towards economic development in poorer countries when it is specifically supported by this specialised Covenant. This argument is dangerously close to putting a price on human freedom and liberty in the name of countries development.

First of all, all signatory countries to either the International Covenant on Economic, Social and Cultural Rights signed the Covenant for the purpose of development of the state, which is justifiable, however, development of the state must always be with its citizens as a vital part of the process, since they are the legal power that legitimizes action of the state. If there is, however, a non-democratic state that is however a signatory country to the Covenant, economic, social and cultural rights are entitled to the people. If there is a non-signatory state, then these rights should have a natural justification as a part of human rights. Previously in this paper it has been disputed where do the human rights originate from. The origin is still disputable, but it is clear that human right do not arise from the power of the state, state is only the protector that is supposed to RESPECT the equality in dignity and rights that every human being is born with, PROTECT these rights and FULFILL the obligations towards the international community and its citizens. By disregarding these obligations by the state in the name of economic progress is immoral at least, in breach with international law and most of all, it results in a wrongful perception of human rights by the public within a state. If the state doesn't lead by example in protection of human rights, the boundaries of dehumanization and othering of marginalised group are crossed in the name of economic progres.. That leads to direct violations and affects the lives of individuals.

In human rights theory, there is a notion that Civil and Political rights are interconnected with Economic, Social and Cultural rights. For example when a person is working, helping country's economic development, the person is entitled to a paid vacation- the perks of labor system. If a person is not granted a vacation, one can almost talk about slavery which is even a breach of international *ius cogens*, a generally enforceable law. In order to enforce this law in person's

---

[27] Burnell, Peter, Vicky Randall, and Lise Rakner. *Politics in the Developing World 4e*. Peter Burnell, Vicky Randall, & Lise Rakner. Oxford University Press, 2014.

[28] "International Covenant on Economic, Social and Cultural Rights - ohchr." 2013. 3 Jul. 2016 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

interests, that person needs to have access to legal representation, which is a Civil and Political right. This is only one of many examples how ESC rights and CP rights cannot be considered one without the other.

"Advocates of this view cite Asian "Tiger" economies where strong economic growth is credited to authoritative rule"[29]. Scholars take this argument as the strongest opposition against the universal application of human rights. Justification for this argument is that the social order needs to remain within a system that can prosper the economy and that *"human rights can subvert social order and thus hinder development"*[30]. That is the point of human rights! Human rights are supposed to change the way that states approach their citizens as human beings with dignity and freedom, not as instruments for economic success of the state. From a strictly moral standpoint this is the equivalent of slavery.

Another disadvantage of this human rights debate is the elitism it brings. Implementation of human rights' norms is left in the hands of the state applying the principle of sovereignty. That means that human rights are left up to political will to be implemented and in some cases, that means political will not to implement human rights in this system. To leave human rights in the hands of often not-legitimately elected officials (such as authoritative forms of government) means, that not all fractions of the population of that particular state have their interests represented. That, again, is a predisposition for inequality in rights and therefore in dignity.

Sovereignty of state is a complex issue when concerning human rights protection. Some states' representatives believe that by adhering to universal human rights legal system, they would sacrifice their sovereignty for international control. Therefore, by claiming sovereignty of state as a political argument, international and domestic criticism of human rights violations are being weakened. "*The lack of political will to enact human rights, not because rights are unsuitable for populations, but are politically unacceptable to the rulers"*[31]. As mentioned in previous pages, human rights have pre-political character- they existed as natural rights before any act of political act. Becoming a signatory party to human rights treaties is a mere acknowledgement of the existence of human right. State representatives need to realise that they are the protector, not the establisher of human rights.

---

[29] Ayittey, George BN. *Defeating dictators: fighting tyranny in Africa and around the world*. Macmillan, 2011.

[30] Ayittey, George BN. *Defeating dictators: fighting tyranny in Africa and around the world*. Macmillan, 2011.

[31] Mahmud, Sakah S. "State and Human Rights in Africa in the 1990s: Perspectives and Prospects, The." *Hum. Rts. Q.* 15 (1993): 485.

The will of the rulers to neglect implementation of human rights protection and the will of the citizens to seek human rights protection may not always be the same. To understand the difference of political will of the rulers and political will of the people is best shown by example. In Zimbabwe, political unwillingness to implement human rights is often being justified by anti-imperialistic rhetoric. *"In Zimbabwe, this argument is made constantly to deflect criticism from repressive domestic policies, hiding brutal oppression behind the language of anti-imperialism*[32]. Brutal regime of president Mugabe in Zimbabwe, that is connected with police brutality and corruption is well documented by international human rights actors. The fact that the international community disregards these atrocities is no secret, however, it doesn't necessarily undermine the legitimacy of Mugabe's anti-imperialistic rhetoric. However, the report of Human Rights Watch brings new light to the situation of how seriously are individual complaints taken in Zimbabwe.

"*The government of President Robert Mugabe continues to violate human rights without regard to protections in the country's new constitution. An expected legislative framework and new or amended laws to improve human rights in line with the constitution has yet to materialize. Police violate basic rights, such as freedom of expression and assembly, using old laws that are inconsistent with the new constitution. Activists and human rights defenders, including lesbian, gay, bisexual, and transgender (LGBT) people, face police harassment. There has been no progress toward securing justice for human rights abuses and past political violence, including violence after the 2008 election"*[33]

The report also mentioned the formation of Zimbabwe Human Rights Commission as an independent institution. However, the government fails to properly fund and promote this institution to such measures that the website of the institution is basically useless, since it does not have any relevant data to present when one wants to go to the section of Frequently Asked Questions, the table that should provide data on handling complaints based on origins of the complaint is empty, the contact information on the official webpage is not-working and other signs of the seriousness with which the ZImbabwean government approaches this institution.[34] If there were any data on the webpage of the Zimbabwean Human Rights Commission, it would show that even though there is no political will to properly implement human rights in practice

[32] Phimister, Ian, and Brian Raftopoulos. "Mugabe, Mbeki & the politics of anti-imperialism." *Review of African Political Economy* 31.101 (2004): 385-400.
[33] "World Report 2015: Zimbabwe | Human Rights Watch." 2015. 5 Jul. 2016 <https://www.hrw.org/world-report/2015/country-chapters/zimbabwe>
[34] "Zimbabwe Human Rights Commission." 2014. 5 Jul. 2016 <http://www.zhrc.org.zw/>

(even after the new Constitution was passed), the citizens demand protection of their fundamental freedoms and liberties.

There are more cases similar to Zimbabwe, where political will of the rulers does not at always reflect the will of the citizens. States should acknowledge their human rights obligations to their citizens as the assigned protectors by the international law, however, if governments refuse to implement human rights protection, the representatives of the government become *de facto* responsible by omission for complaints filed by the citizens against their government.

In a form of representative government, citizens delegate their legitimate power to their elected representatives. Representatives should in their political actions represent the interests of their voters, one of those interests being human rights protection. As shown above, even in *de facto* authoritative governments, citizens' interests are not much different from the interests of citizens in representatively governed states. Therefore, human rights should be considered non-political in nature, since they are claimable by the citizens, but are political in active decision by the governments to implement them. States should reflect their citizens interests in human rights protection by implementing measures for security of these rights, rather than security for state's agendas.

Another argument against the debate of universalism and relativism comes from the cultural relativists side. They argue that "*where universal education and protection against arbitrary arrest to exist, it is because traditions have evolved in particular places that respect and support those practices."*[35] This argument is trying to prove the values of different cultures can only develop over time with sustainable use of certain practices. If some of those practices resemble human rights provisions, it is, according to some relativists, due to the public support for those practices over time, not because of the natural character of those practices as human rights. Relativists therefore argue that these rights or claims are protected not due to any theory of natural origin of these rights, however, they are developed practices in use that society (not the state) has decided to protect in the everyday behavior of the members of society in proceedings with each other. Even if these practices have a character of human rights, some relativists refuse to call them that since "*calling them human rights only disguises this truth and creates a misplaced grievance among those who are denied these 'rights'".*[36]. This proves the fact

[35] "The ideology of human rights - The Interpreter." 2010. 5 Jul. 2016 <http://www.lowyinterpreter.org/post/2010/09/10/The-ideology-of-human-rights.aspx>

[36] "The ideology of human rights - The Interpreter." 2010. 5 Jul. 2016 <http://www.lowyinterpreter.org/post/2010/09/10/The-ideology-of-human-rights.aspx>

(indirectly) that even in relativists' perception, human rights (or whatever the relativists decide to call it) they carry more legal weight when they are in the form of common practices-principles. This is an important realization for further improvement of enforceability of human rights provisions.

However, in my opinion, the biggest challenge that this debate brings to the table is overcoming extremist views. "*Both radical relativism and radical universalism are misguided*[37]. Justifications for such claims may appear obvious, but they are also supported by other scholars. Freeman explains that "*radical cultural relativism gives too much potential for abuse with those in power able to dictate what determines 'culture' to hide abuses of power"*[38]. This notion has been argued previously as politicizing human rights, where not just the legal protection is decided by the rulers, but also the fabric of a particular culture itself are often based on political decisions of the rulers. By this definition however, every form of cultural relativism that is based on the unwillingness of the rulers to acknowledge the real cultural differences rather than the political unwillingness, can be labelled as radical relativism.

Radical universalism is a notion that in its entirety is completely dismissible and practically contradicts itself. Radical universalism as a concept sees unification of rights as absolute and therefore disregards any differences based on cultures, geopolitical and societal differences. That however, this notion makes the application of human rights practically impossible. The reason is explained by Makau Mutua: "*Cultural differences and the right to self-determination must be taken into account for human rights to be applicable, otherwise they will be irrelevant or rejected as imperialism"*[39] What Mutua is reminding us, is that human rights are connected with an individual mostly, however, there is a right that can belong to a community of a certain characteristics- right to self-determination. To disregard the notion of cultural differences, or societal differences is to ignore the right to self-determination and therefore ignore inalienability

[37] Donnelly, Jack. "Cultural relativism and universal human rights." *Human Rights Quarterly* 6.4 (1984): 400-419.
[38] Freeman, Michael. *Human rights: an interdisciplinary approach*. Polity, 2011.
[39] Mutua, Makau. "Human rights in Africa: the limited promise of liberalism." *African Studies Review* 51.01 (2008): 17-39.

of human rights, since the right to self-determination is inalienable from community right holders. This underlines a certain point: previously it has been argued that relativistic theory cannot be applied to human rights by itself, since it would leave the decision of which rights to protect in the hands of the rulers, which can be tricky at least, if not directly in violation of minimal human rights standards. However, universalism also cannot be the sole theory used to apply human rights into practice, since the notion would negate any form of collective right-such as right to self-determination, marginalised group rights and rights of indigenous peoples. Therefore, it really is necessary to find a solution that disregards the radical aspects of both of the main notions, merges their positive and necessary aspects and is a balanced enough concept to create a theoretical basis for a fair and proportionate global human rights application.

2.2 In Search of Common Ground

"Human rights may be regarded as an absolute universal tool of measurement, but they result from a fusion of historical antecedents where "universality" and "specificity" co-existed without mutual exclusivity."[40] Does this mean that the concept of universalism can coexist with the concept of relativism? In my opinion, not really, because their defenders have put themselves in opposition on the academic and diplomatic field, however, that does mean that there are some common grounds between these notions.

After the previous points were made, it is obvious that both universalism and cultural relativism have their fundamental flaws. Revision to certain points is necessary, however, it is inevitable to merge some existing fundamental points that both universalism and cultural relativism find impossible to neglect. So on what basis can we say that these two notions are mergeable? What do they have in common? Yes, human rights protection.

Both of these notions are concerned with human rights. Therefore, the character of human rights should define the values worthy of protection in a certain community or for an individual.These human rights values should in turn decide the character of the system of legal protection that both universalism and cultural relativism fail to provide due to their essential differences. This will be regarded later in this paper as the basis for the bottom up approach to creation of this system in practice.

---

[40] "Human Rights Debate: Universalism Versus Relativism – OpEd ..." 2012. 5 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

As Dr. Gyan Basnet explains: "*fundamental values derived from the concepts of justice, human dignity, the right to respect are shared in all societies and by all cultures and traditions.Human rights emerged and developed as foundational norms and normative instruments of justice, peace and tolerance. They were aimed at the strengthening of social integration across a broad diversity of cultures and political environments."*[41] He is not expressing the natural character of human rights necessarily, however he does make a point that human rights *emerged* as tools based on societal need for *justice, peace and tolerance*. These are the values that individuals within society (any society regardless of culture) wanted to have protected. Even though this protection has not always been applied equally to the whole population (exclusion of slaves, other races, women, disabled etc.) , they were encompassed within the political will of whoever was included in the public debate. As society developed however, these values in order to be effective and justifiable, needed to be applied on more parts of the society. Therefore, it is a shallow argument from cultural relativist to say that some societies are unsuitable for human rights implementation. Some societies have leaders that are yet unsuitable to understand the need to expanded the privileges of human rights to all layers of society.

Human rights are universally and equally applicable to human being according to aforementioned Article 1 of the Universal Declaration of Human Rights. The arguments against say that not all societies or state systems are yet capable to withstand the societal change that human rights bring, however as proved above, they are applicable to values that humans want protected. Therefore, the groups that leaders of relativist countries decide to grant human rights protection to, are in fact labelled human beings. The others, not protected, are in fact being labelled less human by their leaders.

Dr. Gyan Basnet supports this viewpoint by saying: *"we may describe human rights as universal, but in no way can they ignore cultural, social and gender considerations. The very quality of human rights lies in their flexibility in the sense that there is no country where their norms cannot apply, and there is no subject or social issue that cannot be integrated into them*[42] *."* This supports a couple of previously mentioned conceptions, such as the universal character of human rights, also the need to integrate cultural differences into the process of application,

[41] "Human Rights Debate: Universalism Versus Relativism – OpEd ..." 2012. 5 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

[42] "Human Rights Debate: Universalism Versus Relativism – OpEd ..." 2012. 5 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

also the additional need to expand the scope of society worthy of equal protection to the fullest extent, and most importantly, it redefines the universal character of human rights to a universal applicability to *social issues*. Whatever differences they may be in cultures, the ability of human rights to tackle issues within the variety of social and cultural backgrounds.

Social issues vary based on geopolitical, social, cultural and other criteria, however, human rights are capable of *"breaking down cultural barrier and becoming fully accepted as global norms while at the same time showing for different political, social and cultural values.*[43] *"*

This commitment towards respecting multiple identities within different cultures and traditions is even legally established in a form of International Covenant on Civil and Political Rights where article 27 states:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[44] *"*

To this day, this Covenant has been ratified by 168 countries, with another 7 signatory countries. Only 22 countries have not conducted any action towards ratifying this document but is still referred to by many human rights activist and politicians in those 22 countries as summary of principles the governments should abide by. Even though some states have developed different policies regarding human rights application or omission, it is virtually unimportant towards the bottom up approach where human rights arise of values of society rather than political will of its leaders. Human rights applicability cannot be mistaken for human rights protection system sanctioned by the states.

Chapter 3 Alternative views

In the previous flow of the thesis, two main concepts of approaching human rights' application were put against each other in constructive criticism. Both of them provided valid points,

[43] "Human Rights Debate: Universalism Versus Relativism – OpEd ..." 2012. 5 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

[44] "International Covenant on Civil and Political Rights - ohchr." 2013. 5 Jul. 2016 <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

however, both of them uncovered each other's shortcomings and negative effects regarding human rights protection. The previous chapters presented the need for a new revised approach for analytical thinking about human rights. In order to present such a re-imagined concept, another argument needs to be made to make a full point.

The most common negatives of both of the notions presented in the previous chapters, were connected to political phenomenons- such as state sovereignty, lack of political will, different political agendas and others. However, it has also been mentioned (and defended) that human rights cannot be directly tied to the political will of state representatives. Based on the fundamental characteristics of human rights such as applicability to all human beings, justice, rule of law and others one can see that political will is in fact only marginally connected to the entitlement for human rights.The aforementioned fundamental characteristics have emerged naturally from the societal needs rather than being established by the ruling class. But what need would urge a society of human beings to establish such claim rights towards dignity, equality, justice and other concepts?

The following chapter will try to provide more academic insight regarding this question, which should serve as an explanation for the establishment of the desired outcome that should ultimately end the debate between relativism and universalism.

3.1 "Inventing human rights"

The name of this chapter is connected with a same-named study conducted by Lynn Hunt, who is a professor of Modern European history at the University of California. Inventing Human Rights was only one of her publications concerning societal changes subdued to historical influences. The whole title of the book is Inventing Human rights: An Empathetic Understanding.

The main topic of the book is implied in this title: if human rights really have pre-political character, what are their basis? The argument against natural origin of human rights has also been disputed by the relativists as a concept contradicting the freedom of religion, since some religions base their rights in awarding by the self-righteousness and moral authority of a divine being.

However, as mentioned in the previous chapter, there is no need to claim even the divine origin of human rights since it is disputable by the relativist. Even if political and religious authorities'

will does not translate into proper implementation of human rights, some scholars (including Lynn Hunt) claim that human rights are in fact a sort of principles built within a society for itself, and by itself. This chapter will therefore be dedicated to Lynn Hunt's explanation of the origin of human rights as their complete re-invention.

According to Hunt's analysis, *before societies, nations and peoples could recognize and defend human rights of others, individuals had to develop an internal empathy for the individuality and even the bodily integrity of others.* In other words: it is undisputable that stateness (as a representative of nations and societies and our current main theoretical obstacle in human rights implementation) did not develop before human beings started forming societies. Yet, was there chaos? How did human beings manage to coexist before the first states in ancient Egypt, Greece and others? Those may be human basic instincts to form groups, communities and form societies, or it may be a matter of mathematical odds that it is in some form inevitable for human beings to encounter one another. These encounters may have resulted in peaceful interaction based on common interests or in an opposite kind of interaction based on their fundamental differences. It is therefore obvious that human beings started forming societies on *common* interests, which in the historical period before the "invention" of stateness, might have been simple things such as food, protection against hostile environment or reproduction reasons. These primary needs were based on the *common* traits of the members of societies that had to compromise their slight differences within the society for the sake of the common good. These common interests- values -were realized by subjective approach to the options presented by the particular human encounters. "Either an individual cooperates with me and we can fill each other's needs, or he is a threat to me, my well-being and my other personal values." All these realizations are based on empathy- or an emotional state towards another individual. If these empathies amongst individuals included protection of common values, individuals developed *respect* for these values as theirs and also values of others.

By inventing human rights, Lynn Hunt tries not to reinvent their scope, rather their definition by deconstructing it. As she states:

Human rights require three interlocking qualities: Rights must be natural (inherent in human beings), equal (the same for everyone), and universal (applicable everywhere). All humans everywhere in the world must possess them equally and only because of their status as human beings. Most of these traits of human rights have been in some form mentioned previously in

the thesis. However, these traits are only pointing out the fundamental characteristics of human rights, describing their original character.

Lynn Hunt follows the previous statement with: *Human rights become meaningful, however, only when they gain political content. They are not the rights of humans in a state of nature; they are the rights of humans in society.* According to this statement, human rights become *real* or *consumed* when they are transformed into particular legal provisions such as secular laws specified towards human rights' protection or in forms of constitutions. This makes human rights claim rights, not grant rights.

However, doesn't it contradict the very nature of human rights? Previous statements and arguments pointed out the fact that human rights belong to everyone solely on their inclusion in human race. Governments or state representatives responsible for implementation of legal provisions that would *consume* human rights into their actual enjoyability. In an ideal world based on political theories, democratic state representatives have their legitimate power to adopt legislation based on the legitimate power of the citizens. These citizens elect representatives to protect their collective and individual values, which as pointed above are also values based on relation to other individuals. However, when the representatives fail to represent the values of their citizens, and political will becomes a mere will of the ruling class without collective values appropriately represented, human rights are also left solely in the hands of the representatives. These sometimes can neglect some particular group rights or ignore human rights altogether, regardless of the "collective values". It could be argued by Locke's theory of social contract mentioned in his book "We the People"[45], however it would not be a viable argument for cultural relativists.

However, to argue cultural relativists, if human rights are in fact recognized as applicable to every human being regardless of their nationality, even non-democratic regimes disregarding human rights protection are only an obstacle in human rights protection, not in their existence. Citizens of non-democratic countries still possess the eligibility for human rights protection, it is just not being granted to them. Therefore, if governments, or any form of ruling class is not *granting* the protection of fundamental values for their citizens, it does not change the *claimability* of them. If a citizen or any person or a human being, is not being granted his rights by his government, should not he or she be eligible to claim his natural rights by any institution capable of providing the protection of his or her rights? Human rights are now a part of

[45] Doernberg, Donald L. "" We the People": John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action." *California Law Review* 73.1 (1985): 52-118.

international law, whether in the form of principles, international covenants or other forms of soft or hard law. They create obligations towards signatory countries to *actively* RESPECT, PROTECT and FULFILL human rights, implicitly, regardless of their nationality, but on their biological inclusion in the human race. And as had been mentioned previously multiple times: *"Injustice somewhere is a threat to justice everywhere"*.

In order for human rights to work in any country properly, they need to be recognised due to being the nominal common values of human beings, regardless of any state borders. Not to mistake this argumentation for any kind of opinion that would disregard the governments or any kind of institutional establishment. However, as seen in previously mentioned cases such as the case of Zimbabwe, even if human rights are only applicable by the expression of political will, this political will comes out of common nominal values of represented society, rather than the representation of common *elitist* values such as in Zimbabwe or many other countries ignoring the values presented by their citizens.

In a utopian world, where the ruling class would represent the interests of the represented population for the good of the population, created on an empathetic realisation of a common need to protect these interests, human rights become *real.* In today's society, it often happens that the will of the representatives and the represented don't always correlate, neither does the political will represent any kind of a common societal good. Therefore, this argument is against the differences in *de facto* representation of common societal values and *de iure* proclamations of the ruling class working for the good of the citizens. This view points out that yet again, personal political agendas of small elitist class is in fact the real obstacle in human rights application.

During the course of her book, Lynn Hunt describes how as society progressed throughout history, has the concept of equal applicability for the protection of these common values started to incorporate more and more parts of society. Classes such as slaves, women, foreigners were not at first considered to be included in that "promised" representation of common values. However, as society progressed, more topics became the subject of political debate that extended the scope for previously marginalised parts of society. *The American and French declarations each claimed to identify rights inherent to the state of being a human being. As Thomas Jefferson, principal author of the Declaration of Independence, wrote: "We hold these truths to be self-evident."* Jefferson's formulation is presented however, as the only explanation for the self-evidence of human rights on the academic field, therefore it is widely disputed as any kind of moral authority to proclaim human rights-self evident without further explanation of

the meaning of self-evidence. This therefore leaves a seemingly important hole in justification for why should human rights be truly universally applicable. *If equality of rights is so self-evident, how can human rights be universal if they are not universally recognized?* Lynn Hunt proclaims, that even if the legal meaning of the word "self-evidence" can be disputed, their self-evidence is based in societal growth with common nominal values worthy of protection. Therefore, *human rights are difficult to pin down because their inherent claim of self-evidence relies ultimately on an emotional appeal- effective only if it strikes a chord within each person. We thus know that a human right is at issue when we feel horrified by its violation*. And that is the precise link with the self-evidence of human rights and their actual transformation into legal provisions: realization of a threat to the values individuals deem worthy of protection is a direct predisposition for the need of a common system of protection. Lynn Hunt's theory of empathy being necessary in human rights application comes from the obviousness of the need to protect some values of an individual within a society.

These values, as mentioned previously, transformed themselves into concepts so widely respected by the other members of a particular society, that the term of "natural right" has been deemed by Denis Diderot in 1755 as "*so familiar that there is almost no one who would not be convinced inside himself that the thing is obviously known to him. This interior feeling is common to both to the philosopher and to the man that has not reflected at all"*[46] This explanation by Diderot has provided an extended explanation to Jefferson's claim for self-evidence of human rights or any other common values. Human rights are presented as *"not just a set of doctrines formulated in documents. They rest on a disposition towards other people and a set of convictions about what people are like.*[47]

In legal terms self-evidence can be regarded to as customary law, therefore a set of values and rules upheld by the people without any form of legal authority or legal provisions. Legal provisions, only confirm these rules, they do not establish them. Customary law however, has the advantage against the legal provisions of any kind, since the wide use of the customary rules gives larger legitimacy towards their enforcement against other individuals. Human rights as inherent set of values therefore are established by the extensive need to protect them by the help from a particular form of an authority, but for their application in practice these *principles of coexistence and mutual protection of values* do not have to be implemented into legal provisions.

---

[46] Diderot, Denis. "Droit naturel." *Diderot y D'Alembert (1751-1772, 5: 115, 116).[Links]* (1755).
[47] Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

3.2 A New View of the Individual

Even though these rights are self-evident and should be recognized by another right bearers as well, but in order to transform themselves into provision providing protection, it was necessary that individuals had to *internally* realize the existence of particular needs and interests. Even though some of these interests were protected by the common societal establishment, the needs came from within individuals. In Lynn Hunt's publication, she claims that "*Human rights are grounded in new assumptions about individual autonomy. Before they could possess human rights, people first had to be perceived as separate individuals capable of exercising independent moral judgment. Becoming members of a political community grounded in those independent moral judgments required of individuals the capacity to empathize with others."*[48]
In order to become a part of a system capable of protecting individual interests, the individuals had to be aware of the obligations or restrictions posed by this system that would infringe their individual interests. This "moral judgement" of an individual living within a society presented the first forms of political thinking, where individuals had to *compromise* some of their interest for the common good.
First political thinking of an individual was the result of an empathetic approach towards other individuals living within the society. On these basis societies started to value equality in a common interest when shared by multiple individuals, however, individual autonomy of a member of society was the actual origin of those collective thoughts that translated into societal political thinking. This argument does not necessarily contradict universalism, neither relativism. It simply defines the origin of a political will designated towards the protection of human rights.
All so-called "collective values" gained common recognition by continuous political will of individuals that sought protection of their personal interests that was *shared* by the other members of society. Relativists might claim that collective values do not have to be based in an individual, rather in an ideology or religion, however, these values do not represent the political will, nor any internal feeling of the members of that particular community. Values of society are created by the society: values are created with the "bottom-up approach."
Realizing individual autonomy of members of society was directly connected to who had been deemed a member of that society by that society. When analysing human rights as a value of

[48] Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

society worthy of protection, the society is in fact the entire human race. Members of this society become members of this society by being born into the human race, the only members of this society on Earth, worthy of human rights protection. Even though this society is vast in numbers and in territory it occupies, nonetheless, it is a society built on common traits and values. In the contemporary world, we realize that all human beings are in fact humans, regardless of their race, religion, age or health or any other traits. Yet, as the (human) society progressed throughout history, not all biological members of the human race were deemed members of the human society. Slaves, women and other groups had been marginalized and excluded by the representatives of common values. But when some members cannot be included in a society, due to some personal differences, they are excluded from the protection of the "common values", or their values are not represented at all.

During the course of history, certain requirements were necessary in order to be considered worthy of equal treatment in society. Until the 18th century, *all "people" were not imagined morally autonomous, a state that required both the ability to reason and the independence to decide for oneself.*

Mental capacity and factual independence were the primary requirements in order to be viewed as worthy of human rights' (in those times proclaimed as natural rights) protection- therefore to be considered a part of the human society, or having the ability to have the essence of humanity. Children and the insane are not considered to be capable of reason in their state, however they might gain it by growing up or regain it by improving their mental state. Slaves and the propertyless also had a hypothetical chance of regaining their reason by acquiring freedom from their masters or acquiring property by legal means. All of these groups also lacked independence, children from their parents, the insane from their caretakers, slaves from their masters etc. However, women were deemed incapable of independence because they were *defined as inherently dependent on either their father or their husbands.*[49] Human rights were thereof dependent upon full capability of moral capacity. In today's society, in comparison, human rights are not aimed at the protection of the privileged; they aim to protect the marginalized and underrepresented due to the character of human rights- fight against inequality.

So how did the society evolve in extending the scope of human rights protection to marginalized groups? According to Lynn Hunt, it is the power of empathy.

[49] Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

Yet the newfound power of empathy could work against even the longest held prejudices. In 1791, the French revolutionary government granted equal rights to Jews; in 1792, men without property were enfranchised; and in 1794, the French government officially abolished slavery. Empathy and acceptance of individual autonomy thus were skills that could be learned, and long-accepted limitations on rights could be — and were — challenged.[50]

She later continues to explain the existence of this internal moral capacity to empathetically recognize the boundaries of a person's autonomy. This capacity to empathetically approach relations within a society is dependent on the recognition that other individuals feel and think and are afraid of similar level. Lynn Hunt however argues, that the recognition of an individual as autonomous a person needs to be recognized as *legitimately separate and protected in his or her separation*, but the when acknowledging human rights of another individual *a person's selfhood must be appreciated in some more emotional fashion.*

This implies the most important argument for further heading of this thesis: Human rights need to be realised by an individual in self-possession, however, individuals need to simultaneously recognize that all other individuals' rights are also self-possessed. The incomplete realization of the second part is the cause for creating inequality and abuses of human rights. So if an individual does not realize the self-possession of human rights by another individual, a fact that arises by a person being born as a human being, is implicitly marginalizing, or *othering* a person. With all the differences within the human society, based on race, religion, political affiliations, nationalities, there are not many common values, or common traits of the human society. However, the characteristics that is equal across the entire societal spectrum is the aforementioned biological coherence with the human race, being a descendent of other human predecessors. Based on this common trait all equalitarian and universal applications of rights determined by this biological predisposition may be justified.

Lynn Hunt describes the inclination of society towards empathetic approach towards other individuals as it changed over the years and the causes for these societal changes. One of the catalysers in the evolution of human perception of one's or another's selfhood, was art. When ordinary people started seeing theatrical plays or see paintings that very often brought from a foreign country, people started to relate to the stories these pieces of art provided. Humans started to feel a the sense of sameness in their distant individual lives. Paintings or plays that described social struggle affected the way people were capable to relate to other people. *"The very proliferation of individual likenesses encouraged the view that each person was an*

[50] Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.

individual- that is, single, separate, distinctive and original-` and therefore should be depicted as such.[51] Even though, Lynn Hunt was talking about the development on the European continent mostly, the sole capability of a human being to relate to another human being is an undeniable predisposition and another equal trait in the human society for equal human rights protection.

In the end of her chapter, Lynn Hunt puts the legal and the societal roots of human rights into opposition. According to her, since the Universal Declaration of Human rights, there is the inclination towards universal human rights. However, the factual realization of human rights still depends on a decision of an individual to acknowledge another's rights: "*our sense of who has rights and what those rights are ultimately is grounded in our informed empathy for others."*[52] However, the choice to realize other individuals' self-possession of rights, which as previously proven is self-evident in rights claimable by every individual, can only be a choice of ignoring these self-evident rights, or the choice to ignore the information justifying these rights, or ignoring that *internal feeling* that enables humans to relate to other individuals. It is a choice of ignorance.

3.3 Why to dispute whatsoever?

The clash between universalism and relativism has its roots in the academic debate, however it affects the actual implementation and enforceability of human rights provisions. However, are universalism and relativism contradicting? If features of one of these notions are upheld does it necessarily exclude the features of the opposing notion?

Some scholars argue, that one is the predisposition for the other. In order for human rights to work universally, they should take into account the cultural differences and in order to have respectable cultural differences in the contemporary world, it is necessary to abide by universally upheld principles of basic human dignity. *"Human rights and community should mutually constitute one another"*[53] This appeals to the capability of a culture to survive in the contemporary world especially, when human rights international treaties appeal to the states to create an international pressure on the countries with lesser standards of human rights

[51] Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.
[52] Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.
[53] Rengger, Nicholas. "The world turned upside down? Human rights and International Relations after 25 years." *International Affairs* 87.5 (2011): 1159-1178.

application. If a culture should be able to survive with their practices and wide margin of independence and enjoy the advantages of the globalisation process, it should accept a form of compromise with the most unacceptable practices compared to the global practices of perception of human dignity.

Communal values and individual rights are not necessarily incompatible. The process of globalisation "*has been key in generating a multi-culturalization of human rights, making it a truly universal project"*[54] This thesis has already mentioned the flexible character of human rights and their ability to incorporate itself to every social issue. While tackling social issues, recent trends have developed redirecting of the attention toward social and cultural rights and that has given them more legitimacy in the Third world. Legitimacy is a necessary predisposition for implementation of human rights provisions by the authorities

According to Ramcharan: *"the basis of rights need not have cultural or philosophical origins, but instead, be a response to common injustices humanity has seen*[55].

In this view, human rights are reactionary to the violations happening to human beings. As mentioned earlier, human rights have developed from basic values that human beings deemed worthy of protection. This need of protection has its roots often in fear. Past negative experiences, even when experienced indirectly, in a form of a situation happening to another person, or hearing about such situation can make an individual to realise the consequences of the absence of protection for values violated. This is another trait that human beings have in common, they have a need for prevention of further negative effects on their valuables, whether they are abstract values such as life, health, education or if they are concrete subjects of property, land or personal belongings. The different cultural values of relatively different societies bear a common denominator: members of that particular culture deem some values worthy of protection. These basic human needs, or *fundamentals* have been translated into cultural customary practices and rules, which later constituted themselves as *fundamental freedoms*. For some relativists, *fundamental freedoms* are considered to be a Western concept. However, regardless of the wording used in "Western human rights legal documents", these various rights are the essential values of a particular society which were formed by their own customary practices. No matter the culture, *fundamentals* are deemed worthy of protection by the community itself- they are self-evident. Darren O'Byrne describes this as modified

[54] Mutua, Makau. "Change in the Human Rights Universe." *Harv. Hum. Rts. J.* 20 (2007): 3.
[55] Ramcharan, B (2008), *Contemporary Human Rights Ideas*, Abingdon: Taylor & Francis

Kantianism where *"rights are based on fundamental dignity, inherent in human beings without distinction or exception"*[56]

The basis for universal applicability are imbedded in the nature of human beings and their common traits regardless of a culture or a geographical territory they live in. However, that should not be necessarily exchangeable with universality and universal application of human rights. At the beginning of the thesis, universalism was proclaimed an approach preferring *equal* application of human rights which, as stated, does not have to reflect the natural differences in the background of global human rights application. Universal applicability is a term including both the natural similarities based on the coherence to human race, and the differences caused by different backgrounds. The legitimacy for universal applicability is proclaimed by international human rights documents, such as the Universal Declaration of Human Rights. *"The Universal Declaration of Human Rights was formed with major influence from non-western states, giving it legitimacy as a universally applicable document.*[57] According to Glendon, this has denied the notion of the idea, that human rights documents were a solely Western idea that would disregard different societal characters, and that *"has allowed the Universal Declaration of Human Rights to achieve wide acceptance among diverse cultures."*[58]

Universal applicability is regarded as a virtue of human rights protection, however, by itself it is only an abstract concept worthless for factual human rights protection. If human rights are to be *respected* universally, they need to be universally *enforceable*. In this sense, that means that there should always be a system of checks and balances between the right holders and duty bearers that have legal obligation towards other individuals, whether those may be the governments or individuals themselves. Therefore a creation of the International Criminal Court as an independent investigative body capable of charging individuals with human rights violation is a major tool for human rights to be respected and protected. *"By ratifying the Rome Statute, states accept the Court's jurisdiction, thus showing moral and legal acceptance of the*

[56] O'Byrne, Darren. *Human rights: An introduction*. Routledge, 2014.
[57] "The Forgotten Crucible: The Latin American Influence 0." 2013. 13 Jul. 2016 <http://www.corteidh.or.cr/tablas/25400.pdf>
[58] "The Forgotten Crucible: The Latin American Influence 0." 2013. 13 Jul. 2016 <http://www.corteidh.or.cr/tablas/25400.pdf>

ICC's ideals."[59] By ratifying the Rome Statutes, states as representatives of *individual citizens* have shown moral and legal acceptance of its provisions- empathetically acknowledging the internal values of the members of society by deciding to RESPECT, PROTECT and FULFILL these values

When human rights are implemented properly and with regard to different cultural backgrounds, they can become a tool for improvement of society. Upon realization of common traits of human society rather than its internal differences, human society can progress. As mentioned previously human rights, tackle all social problems, whether they are in separate parts of society or general societal issues. Realization of the existence of common threats to human society, such as *"crisis resulting from environmental degradation, global warming and terrorism"*[60], In order to prevent the negative effects of these common threats, human rights can serve as a tool of universal applicability and *"should be at the forefront in the bid to counteract the consequences of this crisis and to establish a just society."*[61] Human rights can serve as a "self-checking mechanism" by continuous use as customary practices, by which can the common social issues, whether external or internal within the human society, be battled by the flexible use and universal applicability of human rights provisions.

Chapter 4 New vision in Human Rights

This thesis put the notions of universalism and relativism under critical analysis and by scrutinizing their fundamental features their flaws and shortcomings in human rights protection were discovered. These flaws were present both in the theoretical definitions suitable for approach towards human rights and also, the thesis discovered shortcomings of the application process of human rights. But the most importantly, this thesis tries to show the redundancy of

[59] Du Plessis, Max. "THE CREATION OF THE ICC: Implications for Africa's despots, crackpots and hotspots." *African Security Studies* 12.4 (2003): 5-15.
[60] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 13 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>
[61] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 13 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

the “clash” or “debate” of universalism and relativism and the necessity to end this debate. In order to do so, a new alternative approach needs to be established for the sake of improvement of the overall human rights situation in the world. Ongoing violations of human rights in relativists countries can no longer be justified by the way their traditions work if they are in breach with the fundamental human dignity. No country should use the human rights as an excuse for fulfilling their national agenda and not deliver on the obligations that human rights application requires. None of these shortcomings and flaws should be repeated in the future in order to prevent further violations of human rights. This new approach will be concerned with both theoretical conceptualization of human rights and the process of their implementation into practice. No good practice can be built without theoretical basis and no theory is proven until successful implementation into practice. My theory has not yet had any practical implementation as a whole, but in various traits it has been in customary practice in society, asi shall be pointed out in the following chapter.

4.1.1 Empathetic Rationalism- theoretical view on human rights

There are a couple theoretical flaws in human rights and how people approach to think about them. Human rights are a trendy issue in the last century and they are slowly incorporating themselves into a general global ideal that is embedded into principles of international law. However, these principles are only widely used in the legal sense. The factual acceptance of these principles does not arise from legal documents. Legitimacy of these principles always comes from the right holders- the people themselves. During the course of historical development of human rights, what used to be called “principles” then, was a group of widely accepted rules necessary in order to protect the values and valuables of individuals. Beginning with the revolutionary processes in the 18th century, society had the tendency to *ensure* the protection of their fundamental principles by the state AND by the authorities, in a form of legal provisions, regulating the extent of rights and limiting the power of government’s restrictions against these rights. In Locke’s theory, this was the original idea of a social contract- to establish a relationship between the society and the governments, where governments are the *protectors* of the common societal values and society wows to adhere to regulations established by the government that were ought to be designed to protect their fundamental values. In a political sense, human rights were designed to be the main model for liberal theory, where the prevalent thoughts established human rights as negative freedom. Negative freedom is a kind of freedom where the individual realises his or hers selfness through freedom to do as he pleases

within a reasonable extent that was lined by government limitations designed to protect further enjoyment of one's freedom.[62] Realisation of personal freedoms and the *boundaries* of that freedom made individuals to acknowledge their values and the need for the protection of these values. As mentioned in the thesis, whether based on negative experiences or by rational choice, societies were designed as voluntary networks of individuals with similar values worthy of protection. Thus, even though, the right of self-determination is currently considered to be a group right, it is safe to claim that the original roots of human rights are in individual realization of personal values (those also might be collective issues such as the good of the family etc.), however, the *protection* of human rights and fundamental freedoms only became possible in a society uniting these values.

As mentioned before, beginning with the 18th century, the need to *instrumentalize* fundamental freedoms and human rights into legal provisions hoping, that this would ensure their proper implementation. The first legal prescriptions of human rights were, however, different in character compared to the ones currently in practice. The Declaration of the Rights of Men implemented in 1789 and Declaration of Independence of 1776 were national documents compared to the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights and others are *treaties* of international character. The character of a document designed to protect fundamental freedoms is an important factor. While the legitimacy of a national document lies in the power of the citizens directly as signatory parties (such as *"we the people"*[63]), however, the signatory parties to the international human rights documents are states by the power of the states representatives. As pointed out in the second chapter, state representatives do not always represent the interest of the represented population and often, interests of minorities are ignored or underrepresented. States, in the name of state sovereignty and in the name of anti-imperialist arguments, that international practices, or common values should not prevail if they are in direct violation with "their way". This "way" is often nothing more than the interests of the elitists that use human rights protection for personal gain without proper and equal distribution of such protection. Not to say, that all state representatives in signatory countries to international treaties have been unwilling to properly implement human rights protection, however, it is apparent that this system of delegation of human rights obligations to the states has its flaws.

---

[62] Berlin, Isaiah. "Two concepts of liberty." *Berlin, I* (1969): 118-172.

[63] Mahoney, Dennis J. "Declaration of independence." *Society* 24.1 (1986): 46-48.

At that point in history, when customary practices of the protection of fundamental values have been institutionalized, they lost a part of their legitimacy. The governments became responsible for not only implementation of human rights that protect the fundamental freedoms, however, the governments became directly a part of *awareness* about these principles. Governments became actively a part of these customary principles, but they were meant only to be the tool for human rights protection. By delegating the power to act as active protectors to the governments in written legal documents, such as constitutions, declarations of people's independence, the human society did not delegate the entire scope of protection towards governments. The original protection of fundamental values, before the age of written legal documents has been provided by *mutual empathy* towards similarities with other members of society, such as their values, common goals or others. Therefore it is important to realize, that while governments might act as protectors of human rights in favor of the individuals, the individuals *themselves* are the source of the legitimate power to protect these self-evident values and freedoms. The delegation of power is a legal concept that is applicable only in the sense of three branches of state in the current world, however, in the sense of human individual values, the natural legitimacy of an individual to proclaim certain values worthy of protection is an analogy to today's legislative powers. These powers *delegate* the authority to ensure the application of their collectively legislated values into practice. In this sense, governments and signatory countries to the international treaties have the *delegated* power by the people- individuals adhering to common collective values. Therefore, it is necessary to point out that in this establishment, people as the legitimate legislative power in incorporating fundamental values into legal provisions, should be actively carrying the role of checks and balances with the executive branch- governments sworn to protect their interests.

It is questionable whether the same systems of checks and balances as is in the national distribution of powers can be applied to human rights implementation scheme. In the national systems, if governments fail to implement the interests of their voters (legitimate sources of power) in satisfactory manner, their sanction will result in lower vote count in the next elections. However, when human rights and their proper implementation have such a direct effect on human lives, regardless of citizenship and country of origin, it is immoral and even criminal to "wait until the next election", or wait until the following representatives improve the fulfillment of their obligations towards human rights protection.

Analogically, to the government system of checks and balances, when a system designed to protect the common values is corruptable, and capable of being abused for carrying out personal

or elitists agendas, safety provisions should be implemented in a form of right to civil disobedience that can be displayed in forms of protests, petitions or mass gatherings. However, when human rights system as a global network of moral principles, documents of soft law, international treaties and others, is implemented on the background of national political agendas, it needs to be effective equally in all countries. Effectivity of human rights is the other trait of the universal applicability that human rights possess. Effectivity is measured in low numbers in negative statistics, such as violation of political and social liberties to individuals, number of complaints submitted to relevant human rights authorities and the number of solved cases and many other factors. Therefore, effectivity is another trait of human rights that requires individual capacity and emotional capability to realize when personal values are violated. Individual approach is embedded in human rights perception by individuals themselves.

Human rights are self-evident, however, the recognition of human rights needs to be realised by an emotional connection towards another individual's situation, his past experiences with violation of the similar values by a third party. However, if an individual encountered negative experiences, the rational response is realizing the fear of similar negative experience happening to this individual might have limiting effects on his or hers values.Natural response to such fear is to create a system of protection for his or her values- by himself or a third party (government). This stream of action is the *rational* response to human rights and the need of their protection.

4.1.2 Empathetic rationalism

While forming this new theory, a couple of necessary traits that need to be taken into account when approaching human rights need to be mentioned:

Realisation of personal values
individualistic approach,
effectiveness,
enforceability,
universal applicability,
rationality,
legitimacy,
emotional investment in personal values,
and realisation of boundaries of freedom.

All of these might seem like separate concepts, however, in human rights approach they constitute and support one another. The root defining traits are the human capability to reason and to feel empathy. After an individual is aware of his values, (using rationality) and is emotionally invested in their durability (by empathetically realising similarities with values of others that might have experienced negative external effect upon their values) he or she seeks to create or find a system of protection (rational enhanced by emotional fear for the durability of values).

This system is based on relations within a society that are *entrusted* (empathetic trust in society and their common fear without protection) to the society as a whole, by the society as a whole (legitimacy by empathetic trust). Individual differences within the society should be reasonably compromised with (rational thinking) for the good of the protection of common values (empathy). By rational realisation of one's values and acknowledging similarities with other individuals' values, common fear for these values sets legitimate boundaries for future approach to personal values (realisation of boundaries of freedom by rational thinking). If an individual fails to acknowledge other's values and the need for their protection for any reason, other individuals have no correlated direct effect upon their values, due to the system of protection they created (enforceability).

When human rights and common human values are realized by common respect for others values (effectiveness based on empathy towards others values and rational thinking), the

boundaries of freedom for enjoyment are implicitly realised (rational thinking) and both one's and others rights are granted equal suitable protection.

Empathetic rationalism in human rights claims the fundamental aims of both universalism and relativism and by critical analysis of their flaws makes the clash of these two concepts redundant. Universal applicability of Empathetic rationalism instead of universal application proclaimed by universalism recognises the values of human race as common and worthy of common societal protection. However, it recognises the flexibility that human rights provide and the applicability to every region is relised by appropriately embedding cultural differences within human rights application to culturally different regions. Human rights are capable of tackling any social problem not by itself, but as a background to individual values worthy of protection by individuals living within a society. This individual approach allows to create a proportionate response (human rights were earlier mentioned as reactionary tool of society) to individual human rights violations and prevent from similar violations happening to different individuals. Empathetic rationalism therefore in its basis is claiming that by realizing one's own rights, and having empathetic approach to other individual's struggles caused by violation of their fundamental freedoms, implicitly, an individual is rationally realizing others rights and the need for their protection. An individual rationally establishes boundaries of his behavior towards other individuals by empathetically relating to similar values that others also deem worthy of common protection. Based on this, relativism is projected into the possibility of relative cultures promoting different *common* values, however, not elitist and political minority agenda.

By identifying the common values with other individuals means to empathetically identify with struggles concerning the protection of shared values. While realizing the common struggles and common traits arising from the universal character of human rights, individuals identify themselves with other *humans*. Any other form of empathetic identification based on other common traits with other individuals is secondary to the natural identification with the human race. Identification with the human race in comparison with any other secondary form of self-identification, is self-evident. For an individual to realize that he or she is a member of the human race is not a matter of choice. It is a matter of realization provided by rationally discovering human essentials and human predecessors. Secondary self-identifications such as identifying oneself as a member of the nordic geographical origin, or as a believer of Islam, national of Italy, or a football player or as a liar; none of these secondary self-identifications prevail over the primary identification as humans. Human rights are undeniable for every

member of human race. If a person is a national of Italy, he or she does not lose human rights, it does not obtain the rights specific for Italian nationals. If person is not muslim, it does not enjoy the advantages of the muslim faith, but in no way does a person not believing in Islam lose his or her human rights. Self-identification as a member of the human community serves not as a distinguishing feature with other societies, however as a unifying tool for common improvement of shared violations of fundamental freedoms.

4.2 Global individualism

Global individualism is the practical approach towards empathetic rationalism and the impact its implementation would have on effective enforcement of fundamental freedoms.

Human rights in their universal applicability are a globally applicable concept. "*All human beings are born free and equal in dignity and rights."* Human rights due to their legitimisation by the people themselves united in common values are entitled to claim human rights protection solely based to their human biological origins. Therefore, every individual needs to have access to proper proceedings in pursuit of the damages caused by violations of his or hers fundamental values. In order this for these procedures of enforcement of individual's claim rights to be effective, accessible. Access for individuals is reliant on "bringing" the enforcement mechanism of his personal values as close to an individual as possible. Regional institutions responsible for human rights protection should engage more actively in resolving cases of human rights violations and should be able to pose reparatory measures carried out by a related institution with the jurisdiction over the violator (an individual or a legal person). Individual complaints should be handled thoroughly and promptly with proper consideration of personal background. Universal applicability of human rights would transfer itself into a system of human rights regional mechanisms capable of analysing and solving human rights violations. System of oversight over regional and local institutions responsible for human rights enforcement should be created by members of civil society, individual reports of effectiveness, however, it is vital to have a form of international oversight in order to prevent violations of the common global values even with regard to cultural differences and individual backgrounds. Human rights are a set of global values of the human race and to ensure their customary respectability and acceptance gives legitimacy for further application of human rights provisions. Individuals should be able to claim theirs and others rights globally with equal accessibility ensured

worldwide. In legal theory, the regional institutions would serve as quasi-judicial body under the supervision of common principles of human rights.

Predisposition of claiming and realizing one's rights is the informations necessary to realize and claim one's rights. This information is not to be mistaken for an establishing factor of human rights, where an individual unaware of his particular rights does not possess them, however, in order to properly implement human rights acceptance, it is necessary to *educate* society on the rights that naturally belong to them and analyse them on the background of cultural and individual differences. Human rights should be promoted from a young age, because human rights belong to every human, even children and appropriately they should be able to realize these rights in the event of their violation to them or others. Individuals upon setting their boundaries should realize the inequalities in boundaries posed by other individuals and should find a proportionate response in equal distribution of human rights. Common fundamental values should be shared and acknowledged, therefore a flow of information about personal values should be presented and educated about in order to relate to other individuals. However, similarities in individual values in society should be promoted and protected rather than the differences. Realizing a difference and relating to other individuals based on the same differences creates additional set of values, however, it does not denounce the common values of the general human society- human rights and fundamental freedoms. Therefore values common to human rights always prevail over other values based on human differences. Values based on differences may be exercised if they are not contradictory to common values of human society..

Global individualism does not contradict neither universalism neither relativism. While accepting the existence of the Universal Declaration of Human Rights as the legitimate predisposition for universal applicability, global individualism supports the notion of universalism. However, universal application of human rights presented by universalists lacked the necessary proportionality towards cultural and individual differences. Universalism has also failed to be effectively universally accepted due to the reasoning of anti-imperial arguments of relativists. Global individualism takes into account the cultural differences necessary for objective rational realization of one's claim to the protection of fundamental freedoms. Cultural differences are realized by the regional and local character of the responsible human rights institutions. What both of the original notions lacked was a way to bypass the argument of violation of state sovereignty. Some representatives of states claimed that their state sovereignty was violated by implementation of human rights provisions. However, states can claim the

protection of state sovereignty only in the name of protecting citizens' interests, statehood, or other "collective" values of a particular state. However, collective values are collectively respected and exercised as fundamental freedoms, additional values are respected by only additional group and cannot be proclaimed for collective values. As proven in this thesis, there are a handful of universal values but one of them is the emotional investment of an individual in protection of his or hers fundamental values, therefore such a common value should be ensured in a form of mechanisms capable of ensuring the claims for individual freedoms.

The human rights mechanisms of protection of individual rights and the national institutions designed to represent individuals interests in political plurality are not in a counterproductive way. Local and regional institutions ensure handling of individual cases and national institutions ensure implementation of policies representing political plurality and common national values, with regards to existing common values of human rights.

Global individualism is a step towards improvement of a system that has proven to be vulnerable to abuses by governing elites responsible for implementing human rights and failing to do so appropriately. Implementation of rights that are designed to protect individual values should come from the individual peoples themselves. This bottom up approach is implemented into practice by reviewing the complaints and the shortcoming in government obligations and their negative effect on the fundamental rights of individuals. This constant review of violations should serve as precedent setting mechanism designed to prevent further similar violations. These precedents should be taken into regard only in compliance with international human rights practices, however should be able to identify a legal hole without any form of regulation for new kinds of human rights abuses and set precedent for the future in all regional and local human rights institutions globally. Legitimacy for regulating personal borders have first and foremost individuals themselves upon realizing their own rights and values. Therefore, individuals themselves are more suitably equipped to be able to create a system of protection of common values, set of fundamentally accepted principles. Experienced further decline in the number of complaints serves as a representation of a level of the protection of the values worthy by the members of human society.

4.3 Human rights as global political movement

Arguments supporting the conceptualization of human rights approach that the notions of Global Individualism and Empathetic Rationalism provide, have been discussed in the academic debate as parts of critical analysis of universal and relativism. Although some scholars have debated human rights from different points of view regarding the possibility of their application into practice, however most of these theories have only had secular approach to the theory and practice of human rights. Dr. Gyan Basnet believed in universal applicability of human rights as a trait capable of larger social change.

"Many scholars see human rights as a universal phenomenon, and they regard them as the means to a greater social end: they are, they believe, fundamental and common to all societies. Human rights are part of the inherent dignity of every human being: they belong to all in equal measure because all are human, be they male or female, young or old, rich or poor, atheist or believer. Universalists thus base their understanding of human rights on the liberal tradition that rights accord to the individual a set of minimum standards by virtue of his or her being human – a universal concept in that they reach out to every person alive.[64]*"*

Dr. Basnet also explains that understanding of universality as predispositioned by individual approach to human rights. However, in this citation, human rights are regarded to as "*means to greater social end"*. Proper human rights protection is a predisposition for a society without violations of common fundamental freedoms. Through enabling the full extent of exercise for fundamental rights and protection of fundamental values based on empathetic respect for the values of others and the rational capacity to realize the consequences of violation of common

[64] "Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 14 Jul. 2016 <http://www.eurasiareview.com/27062012-human-rights-debate-universalism-versus-relativism-oped/>

and individual values the human society creates a self checking mechanism (one individual by another) of human rights protection.

However, in the contemporary society, which is heavily politicized, can human rights ideals become a movement of general acceptance? For politically oriented scholars, it is impossible to accept such an abstract idea as human rights into general acceptance, without a form of political ideology. However, based on the definition of political ideologies provided by Andrew Heywood, an ideology can be defined as *„a more or less coherent set of ideas that provides the basis for organized political action, whether this is intended to preserve, modify or overthrow the existing system of power"* [65]. Human rights are in fact a coherent set of ideas based on equality, justice and personal liberty. However, coherence of this set of ideas is disputable regarding the capability of providing a base for political action. Human rights are based in liberal thoughts however and many political parties identifying themselves as liberal, or social-democratic are representing the values embedded in human rights, such as individual freedoms by the liberal parties and equal social distribution of rights being represented by left-oriented parties. However, it would be daring to say that human rights have been applied as a political theory. However, the notion of Global Individualism upholds the essential traits and ideals of human rights in order to be considered a potential political ideology. The flexible nature of human rights allows the political action of Global Individualism to be engaged in any social issue rationally, and empathetically in order to better implement provision regulating all spheres of human society with regards to human rights.

In comparison with Freeden's definition of a political ideology, it is characterised by: *"public forms of language intended for large groups of people, group products linked to particular social group (sharing common understanding of the world), threefold use of emotions, rational discourse wrapped in emotive idiom, emotional significance of core ("non-negotiable") values, central role of emotions in social and political life.."*[66] Human rights are intended for the largest social group of people- all of the people, and they use a language of shared common values,

[65] Heywood, Andrew. *Political ideologies: An introduction*. Palgrave Macmillan, 2012.
[66] Freeden, Michael. *Ideologies and political theory: A conceptual approach*. Oxford University Press on Demand, 1996.

based on emotional investment in the protection of one's and common values. Rational discourse wrapped in emotive idiom is projected through the empathetic connection to violations of others rights and the rational need to prevent similar negative effects to happen. However, the non-negotiable values of human rights are all of them and that is the main trait of human rights as a political ideology. All of the points of their political program need to be fulfilled in order to achieve equal and universal acceptance.

As Martin Luther King said: *"Injustice somewhere is a threat to justice everywhere."*

Similar ideological traits can be found in liberalism (personal liberty), however, Global individualism could find most of its traits in anarchistic theory, where the original nature of human rights does not require an authority to establish how limited the use of individual rights should be.

4.4 Role of Civil Society in Global Individualism

Civil society has been a key instrument in human rights protection since the establishment of international human rights networks in the second half of the 20th century. According to Mahmud *"rights are better respected if they come from population, not isolated leaders or foreign imposition"*[67] Civil society provides a venue where individuals can get more involved in the decision making that concerns human rights, by continuous identification of social problems and by individual reporting of human rights violations in their proximity. According to social

[67] Mahmud, Sakah S. "State and Human Rights in Africa in the 1990s: Perspectives and Prospects, The." *Hum. Rts. Q.* 15 (1993): 485.

research, scholars started to rise in general societal investment in issues of human rights after the end of the Cold War and started calling it the "Cheetah generation". Ayittey identifies this social phenomenon as *"critical and reformist civil society, supporting accountability and human rights. Civil society represents the most legitimate and effective route for human rights to be universally realised."*[68] The investment of more individuals in the matter of human rights is usually connected with the need to claim, enforce or protect their rights within a system that does not factually protect their rights. The trend to actively seek the claim to the fundamental rights that are self-evident in nature has become to change the nature of society, where the civil society serves as a representative of "whistleblowing" policies, where shortcoming in the system of protection established by the governments need to be uncovered, investigated, scrutinized with international common values and principles in regard, and then adequately remedied.

To conclude the connection of Civil society to the notion of Global individualism with universal applicability in mind, a similar study from the University of Lincoln claims:

"In conclusion, conceptions of human rights based on collective histories of humanities' injustices make a strong case for the value of universal human rights, particularly in light of damaging manipulation to mainstream human rights theory. It is clear civil society will play a fundamental role in promoting and protecting human rights. If the international community maintains a positive, critical role and domestic pushes for human rights are legitimised by international law, human rights have the potential to be universal."[69]

What is the desired outcome that should result from implementation of the notions of Global individualism and Empathetic rationalism? The desired outcome is general acceptance of human rights and individual values of others and ourselves. By accepting the boundaries of our

[68] Mahmud, Sakah S. "State and Human Rights in Africa in the 1990s: Perspectives and Prospects, The." *Hum. Rts. Q.* 15 (1993): 485.
[69] Lower, Matthew. "Can and Should Human Rights Be Universal?."

behavior based on human rights, and continuous respect for those boundaries, human rights become customary again. The origin of human rights as common values of the human society has proved to carry more legitimacy for their acceptable implementation into society. Individuals legitimize common values by identifying with them. Universal applicability should result in universal identification by self realization of all the members of the human society. Identifying oneself by the common fundamental freedoms of human society translates into identifying oneself as a human. Therefore, in order to implement Global individualism and Empathetic rationalism in society, *Don't be universal, Be HUMAN.*

Conclusion

This thesis was aimed at establishing a theory designed for effective application of human rights, regardless of the universal and relativist views that are affecting the implementation process in practice. In order to develop such a theory, the existing views of universalism and cultural relativism needed to be revised in the light of their prosperity for the individual human rights protection. Key features of both notions were critically analysed and compared to critical views of other scholars. Common basis of criticism for both of these notions were established and upon those the thesis follows the development of a theory that eliminates the negative traits of these notions, and merges the fundamental features of human rights arising from the analysed theories.

The fundamental characteristics of universalism were presented at the beginning of the thesis. Upon critical comparison with opposing views of relevant scholars, the feature of universalism that has been criticized the most was in fact universality itself. Opposing authors claimed that universalist approach to implementation of human rights is often mistaken for *imperialism of the West* by the relativists countries. Relativists interpret the notion of universalism as an *imposition* of externally created legal system that infringes upon the sovereignty of states. However, during the course of the thesis, this argumentation has been opposed many times and as proven, this fear of *Western imperialism* is irrational and unjustified in the contemporary society.

Relativism has been scrutinized in the thesis as a theory where the application of human rights needs to respect cultural differences when some of them might contradict human rights principles. The claim for relativists argument was often found in the notion of *collective values* of a particular culture, however, the thesis proved that these claims are often representing only the *collective values of the elites* and not the population as a whole. The thesis also proved that universalism is not put into competition for exclusivity to human rights approach, since the universal legal documents establish the respectability of different cultural values and the need for a proportionate application in these cultures.

In the third chapter, the thesis presents alternative views for critical analysis towards these issues that should be implied by the fundamental character of human rights themselves. These different views have crystalised the important features of human rights that were in some form projected into the existing notions.By merging the common features that have a non-negotiable character for the implementation of human rights, such as effectiveness, universal applicability, respect for minority values, and others, the thesis have developem theoretical basis for the approach to human rights. Empathetic rationalism as a theory is capable of making a social change, is based on the traits of human nature such as the ability to emotionally connect to another individual's struggles and the mental capacity to rationally formulate a response to any threats to individual fundamental values.

The notion of Global individualism, is a projection of empathetic rationalism into the process of human rights application. Features of this notion include availability of institutions responsible for human rights protection, promoting a culture of individual complaints in human rights violations and legitimising the population to be a part of the system for checks and balances of the institutions responsible for implementation of human rights provisions.

At the end, this thesis provides justification for human rights to be capable of becoming a political ideology, which is a vital part for making a larger social change. Human rights have already been implemented in the social conscience and the need for their protection has been claimed more and more after the end of the Cold War. Human rights protection is still an area that needs to be properly research in order to ensure proper implementation and enforcement of human rights in the lives of individuals.

However, the ultimate goal of possible implementation of Global Individualism into practice is the true unification of human society. Due to internal differences in cultures, races, religions or other, individuals tent to protect their values based upon a secular identification with other people's values, rather than a general one. This causes a separation of society, based on identification with group values, instead of *common values*. These common values arise from human nature, with an individual being born free and equal in dignity and rights, or other traits of the human race, that are considered

unifying- therefore representative of the real common values of humanity. Identification with these common values proved to be vital in proper application of human rights.

When you identify yourself as a universalist, you may be implying a lack of respect for the cultural traditions. When you identify yourself as a relativist, you may be implying the crucial differences in approach to equal human dignity which should be equal for all human beings regardless of their culture.Therefore, identify yourself as a global individual with respect to individuals living in different cultural backgrounds that are entitled to claim the rights that belong to all human beings universally. So don't be universal. Don't be a relativist. Be human.

Bibliography

- Human Rights Debate: Universalism Versus ... - Eurasia Review." 2012. 29 Jun. 2016
- Donnelly, Jack. "Cultural relativism and universal human rights." *Human Rights Quarterly* 6.4 (1984): 400-419.
- Langlois, Anthony J. "Normative and theoretical foundations of human rights." *Human rights: Politics and practice* (2009): 11-25.
- Human Freedom Index | Cato Institute." 2015. 29 Jun. 2016
- Rengger, Nicholas. "The world turned upside down? Human rights and International Relations after 25 years." *International Affairs* 87.5 (2011): 1159-1178.
- Adar, Korwa G. "The Wilsonian Conception of Democracy and Human Rights: A Retrospective and Prospecti." (1998).
- The Liberal Virus: Permanent War and the ... - Monthly Review." 2015. 1 Jul. 2016 <http://monthlyreview.org/product/liberal_virus/>
- Franck, Thomas M. "Are human rights universal." *Foreign Aff.* 80 (2001): 191.
- "The Universal Declaration of Human Rights | United Nations." 2015. 1 Jul. 2016 <http://www.un.org/en/universal-declaration-human-rights/>
- Freeman, Michael. *Human rights: an interdisciplinary approach*. Polity, 2011.
- Sen, Amartya. *Development as freedom*. Oxford Paperbacks, 2001.
- BIELEFELDT, H. ""Western" versus "Islamic" Human Rights ... - Syracuse University." 2000. <http://insct.syr.edu/wp-content/uploads/2013/03/Beilefelt.2000.Cultural-Relativism-Critique.pdf>
- Phillips, Anne. *Multiculturalism, universalism and the claims of democracy*. United Nations Research Institute for Social Development, 2002.
- "The ideology of human rights - The Interpreter." 2010. 2 Jul. 2016 <http://www.lowyinterpreter.org/post/2010/09/10/The-ideology-of-human-rights.aspx>
- Studies, Post-Colonial. "The Key Concepts." *BILL ASHCROFT, GARETH GRIFFTHS AND HELEN TIFFIN* (2000).
- 12_The Other and the Othering." 2015. 2 Jul. 2016 <http://www.forpsicom.uniba.it/public/files/The%20Other%20and%20the%20Othering.pdf>
- Groenfeldt, David. "The future of indigenous values: cultural relativism in the face of economic development." *Futures* 35.9 (2003): 917-929.
- Burnell, Peter, Vicky Randall, and Lise Rakner. *Politics in the Developing World 4e*. Peter Burnell, Vicky Randall, & Lise Rakner. Oxford University Press, 2014.
- "International Covenant on Economic, Social and Cultural Rights - ohchr." 2013. 3 Jul. 2016 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- Ayittey, George BN. *Defeating dictators: fighting tyranny in Africa and around the world*. Macmillan, 2011.
- Mahmud, Sakah S. "State and Human Rights in Africa in the 1990s: Perspectives and Prospects, The." *Hum. Rts. Q.* 15 (1993): 485.
- Phimister, Ian, and Brian Raftopoulos. "Mugabe, Mbeki & the politics of anti-imperialism." *Review of African Political Economy* 31.101 (2004): 385-400.
- "World Report 2015: Zimbabwe | Human Rights Watch." 2015. 5 Jul. 2016 <https://www.hrw.org/world-report/2015/country-chapters/zimbabwe>
- "Zimbabwe Human Rights Commission." 2014. 5 Jul. 2016 <http://www.zhrc.org.zw/>
- Mutua, Makau. "Human rights in Africa: the limited promise of liberalism." *African Studies Review* 51.01 (2008): 17-39.
- "International Covenant on Civil and Political Rights - ohchr." 2013. 5 Jul. 2016 <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

- Doernberg, Donald L. "" We the People": John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action." *California Law Review* 73.1 (1985): 52-118.
- Diderot, Denis. "Droit naturel." *Diderot y D'Alembert (1751-1772, 5: 115, 116).[Links]* (1755).
- Hunt, Lynn Avery. *Inventing human rights: A history*. WW Norton & Company, 2007.
- Ramcharan, B (2008), *Contemporary Human Rights Ideas*, Abingdon: Taylor & Francis
- O'Byrne, Darren. *Human rights: An introduction*. Routledge, 2014.
- "The Forgotten Crucible: The Latin American Influence 0." 2013. 13 Jul. 2016 <http://www.corteidh.or.cr/tablas/25400.pdf>
- Du Plessis, Max. "THE CREATION OF THE ICC: Implications for Africa's despots, crackpots and hotspots." *African Security Studies* 12.4 (2003): 5-15.
- Berlin, Isaiah. "Two concepts of liberty." *Berlin, I* (1969): 118-172.
- Mahoney, Dennis J. "Declaration of independence." *Society* 24.1 (1986): 46-48.
- Heywood, Andrew. *Political ideologies: An introduction*. Palgrave Macmillan, 2012.
- Freeden, Michael. *Ideologies and political theory: A conceptual approach*. Oxford University Press on Demand, 1996
- Lower, Matthew. "Can and Should Human Rights Be Universal?.

Annexes

USA- the United States of America
UDHR- Universal Declaration of Human Rights
ICCPR- International Covenant on Civil and Political Rights