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Secção I

Investigação Científica*

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Can cultural relativism affect the international protection of human rights?¹

Pode o relativismo cultural afetar a proteção dos direitos humanos?

João FERREIRA DIAS²

ABSTRACT: This paper examines the influence of cultural relativism on the international protection of human rights, addressing the complex interplay between universal human rights standards and cultural diversity. Cultural relativism, which posits that human rights should be interpreted within the context of a specific culture, often conflicts with the principle of universality upheld by international human rights instruments. This tension raises critical questions about the applicability and enforcement of human rights norms across diverse cultural landscapes. By analyzing concrete cases and theoretical perspectives, the paper explores how cultural relativism can challenge and enrich the discourse on human rights. It highlights the potential for cultural relativism to undermine universal human rights protections by justifying practices that violate fundamental rights. Conversely, it argues that a nuanced understanding of cultural contexts can enhance the legitimacy and effectiveness of human rights interventions. The paper concludes by advocating for a balanced approach that respects cultural diversity while upholding the core human rights principles, emphasizing the need for dialogue and adaptability in the international human rights regime.

The paper examines how instruments like the African Charter on Human and Peoples' Rights offer pathways to reconcile universal human rights with cultural diversity through adaptive frameworks.

KEYWORDS: cultural relativism, universalism, ius cogens, human rights.

RESUMO: Este artigo examina a influência do relativismo cultural na proteção internacional dos direitos humanos, abordando a complexa interação entre os padrões universais dos direitos humanos e a diversidade cultural. O relativismo cultural, que defende que os direitos humanos devem ser interpretados no contexto de uma cultura específica, entra frequentemente em conflito com o princípio da universalidade defendido pelos instrumentos internacionais de direitos humanos. Esta tensão levanta questões críticas sobre a aplicabilidade e aplicação das normas de direitos humanos em diversos cenários culturais. Ao analisar casos concretos e perspectivas teóricas, o artigo explora a forma como o relativismo cultural pode desafiar e enriquecer o discurso sobre os direitos humanos. Realça o potencial do relativismo cultural para minar as proteções universais dos direitos humanos, justificando práticas que violam os direitos fundamentais. Por outro lado, defende que uma compreensão diferenciada dos contextos culturais pode aumentar a legitimidade e a eficácia das intervenções em

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matéria de direitos humanos. O artigo conclui defendendo uma abordagem equilibrada que respeite a diversidade cultural, ao mesmo tempo que defende os princípios fundamentais dos direitos humanos, enfatizando a necessidade de diálogo e adaptabilidade no regime internacional dos direitos humanos.

O artigo analisa a forma como instrumentos como a Carta Africana dos Direitos do Homem e dos Povos oferecem vias para conciliar os direitos humanos universais com a diversidade cultural através de quadros adaptativos.

PALAVRAS-CHAVE: relativismo cultural, universalismo, ius cogens, direitos humanos.

Introduction

Human rights, founded on universal moral principles, have long constituted a cornerstone of international law and global governance. These rights are enshrined in seminal documents such as the Universal Declaration of Human Rights (UDHR) and subsequent international treaties, aiming to protect all individuals' inherent dignity and freedoms, irrespective of cultural, social, or political backgrounds. However, the universality of human rights has sparked significant debate, particularly concerning cultural relativism.

Cultural relativism posits that human rights and ethical standards should be interpreted within the context of individual cultures. This perspective challenges the notion that a single set of universal rights can be applicable across diverse cultural contexts. Proponents argue that imposing universal standards may lead to cultural imperialism, undermining local traditions and values. Conversely, critics of cultural relativism assert that it can be used to justify practices that violate fundamental human rights, such as gender discrimination, oppressive social norms, and other forms of systemic inequality. As Antai illustrates, cases like Uganda's Anti-Homosexuality Act (2023) reveal the practical challenges of reconciling cultural sovereignty with universal human rights principles³.

The tension between universal human rights and cultural relativism is not merely theoretical but has practical implications for the enforcement and legitimacy of international human rights standards. Numerous case studies worldwide demonstrate the difficulties faced by international bodies and non-governmental organizations (NGOs) in addressing human rights abuses within culturally diverse settings. Efforts to reconcile these tensions require not only

³ ANTAI, Godswill Owoche. Universality versus Cultural relativism in International Human Rights: A Case Study of the Anti-Homosexuality Act of Uganda 2023. *IAA Journal of Management*, 2023, 11(2):1-14.

legal frameworks but also intercultural dialogue and localized advocacy strategies that respect cultural sensitivities without compromising core human rights principles⁴.

This paper delves into the complex relationship between cultural relativism and the international protection of human rights. By examining theoretical frameworks and real-world examples, it aims to provide a comprehensive understanding of how cultural relativism affects the interpretation, implementation, and effectiveness of human rights globally. Furthermore, it proposes strategies for reconciling cultural diversity with the imperative of protecting universal human rights, advocating for an adaptive and dialogical approach to human rights advocacy and enforcement.

This paper contributes to the ongoing discourse on balancing respect for cultural differences with the necessity of upholding human rights standards that safeguard the dignity and freedom of all individuals. It endeavors to advance a more inclusive and effective international human rights regime through critical analysis and interdisciplinary perspectives.

Cultural Relativism and its The Postmodern Roots

Cultural relativism emerged prominently as a theoretical perspective within the broader intellectual currents of postmodernism. Postmodern thought, characterized by its skepticism towards grand narratives and universal truths, provided fertile ground for the development of cultural relativism. The postmodern critique of Enlightenment rationality, with its emphasis on the multiplicity of perspectives and the contingent nature of knowledge, significantly influenced the articulation of cultural relativism⁵.

Postmodernism questions the validity of universal claims, arguing that knowledge and truth are constructed within specific cultural and historical contexts. This epistemological stance undermines objective, universally applicable principles, including those related to human rights. Instead, it posits that all cultural beliefs, practices, and norms are equally valid and must be

⁴ BIANCHI, Andrea. "Human Rights and the Magic of Jus Cogens." *European Journal of International Law*, 2008, 19, 3: 491-508.

⁵ BINDER, Guyora. Cultural relativism and cultural imperialism in human rights law. *Buff. Hum. Rts. L. Rev.*, 1999, 5: 211. PLUCKROSE, Helen; LINDSAY, James A. *Cynical theories: How activist scholarship made everything about race, gender, and identity—and why this harms everybody*. Pitchstone Publishing (US&CA), 2020.

understood within their unique contexts. For example, as Pratiwi argues, the legitimacy of human rights frameworks often depends on their ability to adapt to the cultural and historical settings in which they are applied⁶. This relativist view challenges the imposition of one culture's standards onto another, advocating for a pluralistic appreciation of cultural diversity⁷.

Key postmodern thinkers, such as Michel Foucault⁸ and Jacques Derrida⁹, critiqued the power dynamics inherent in the production of knowledge and the enforcement of norms. Foucault's analysis of power/knowledge relations and Derrida's deconstruction of binary oppositions reveal how dominant cultural narratives can marginalize alternative perspectives. These insights contribute to cultural relativism by highlighting how claims of universality can serve to perpetuate cultural imperialism. Derrida's deconstruction of Western binaries underscores how cultural imperialism can be masked as universalism, as Dau discusses in his analysis of harmful cultural practices in Sub-Saharan Africa, particularly focusing on female genital mutilation (FGM)¹⁰.

Michel Foucault's work is pivotal in understanding the postmodern foundation of cultural relativism. Foucault's notion of power/knowledge posits that what societies deem as 'truth' is inextricably linked to the power structures that produce and sustain it. According to Foucault, knowledge is not merely a reflection of reality but a tool used by those in power to maintain control. This perspective emphasizes that different societies, with their unique power dynamics, produce different truths, thus questioning the possibility of a single, universal set of principles that transcends all cultural contexts.

Jacques Derrida's deconstruction further complements Foucault's ideas by dismantling binary oppositions that dominate Western thought, such as the dichotomy between civilized and uncivilized or developed and undeveloped. Derrida argues that these binaries are not neutral but laden with hierarchical values that privilege one side. This critique is particularly relevant to debates on

⁶ PRATIWI, Cekli Setya. Bridging the Gap Between Cultural Relativism and Universality of Human Rights: Indonesia Attitudes. *JILS*. 2020, 5:449-478.

⁷ DONNELLY, Jack. Cultural relativism and universal human rights. *Hum. Rts. Q.*, 1984, 6: 400.

⁸ FOUCAULT, Michel. The Order of Discourse. *Language and politics*, 1971, 108-138.

⁹ DERRIDA, J. Writing and Difference. Chicago: Univ. 1978.

¹⁰ DAU, Santino Ayuel Longar. International human rights standards versus cultural practices: a case against harmful cultural practices in Sub-Saharan Africa, with a specific reference to FGM. *Discover Global Society*, 2024, 2, 1; <https://doi.org/10.1007/s44282-024-00046-8>.

human rights, as Dau¹¹ illustrates in his examination of harmful cultural practices in Sub-Saharan Africa, where Western narratives of universality often fail to account for local complexities.

The postmodern challenge to universalism also draws from Jean-François Lyotard's concept of the "postmodern condition," which critiques the grand narratives of modernity, including the Enlightenment narrative of progress and universal reason. Lyotard argues that these grand narratives have lost their credibility and that society has entered a postmodern condition where knowledge is seen as fragmented and localized. This fragmentation supports the idea that principles cannot be universally defined but must be interpreted within the specific cultural and historical contexts in which they are situated¹².

Moreover, Richard Rorty's pragmatic approach rejects the search for objective foundations of knowledge and instead emphasizes the contingency of human practices and beliefs. Rorty's anti-foundationalism aligns with cultural relativism by suggesting that values should be viewed as contingent social constructs rather than universal absolutes. This perspective encourages a more flexible and culturally sensitive approach to understanding and interpreting values, one that is open to reinterpretation and renegotiation in different cultural settings¹³.

These postmodern critiques collectively undermine the legitimacy of universal human rights by exposing their roots in specific historical and cultural contexts. They argue that what is often presented as universal is, in fact, a reflection of particular cultural values, particularly those of Western liberalism. However, as critics of cultural relativism have noted, these perspectives risk enabling harmful practices under the guise of cultural autonomy, as seen in debates surrounding female genital mutilation and child marriage. By challenging the notion of a single, overarching human rights framework, postmodernism opens the door to a more pluralistic and culturally relativist understanding of

¹¹ DAU, International human rights standards versus cultural practices: a case against harmful cultural practices in Sub-Saharan Africa, with a specific reference to FGM.

¹² LYOTARD, Jean-François. *The postmodern condition: A report on knowledge*. U of Minnesota Press, 1984.

¹³ RORTY, Richard. Contingency, irony, and solidarity. In: *Shaping Entrepreneurship Research*. Routledge, 2020. p. 505-520.

human rights, which respects and incorporates the diversity of human cultures and experiences.

Human Rights: from Liberal Revolutions to *Ius Cogens*

The origins of human rights can be traced back to ancient civilizations and philosophical traditions. Concepts akin to human rights appeared in the works of Greek philosophers such as Plato and Aristotle, who deliberated on justice, natural law, and the inherent worth of individuals¹⁴. Similarly, in ancient Rome, Cicero articulated notions of natural law that influenced subsequent legal traditions.

In the Eastern philosophical context, Confucius's teachings emphasized human dignity, respect, and moral duties, resonating with contemporary human rights principles¹⁵. As Viljoen¹⁶ observes, regional instruments like the African Charter on Human and Peoples' Rights reflect these historical and cultural influences by integrating both universal and context-specific rights.

The Enlightenment era¹⁷, which spanned the 17th and 18th centuries, shaped modern human rights discourse. Thinkers such as John Locke, Jean-Jacques Rousseau, and Immanuel Kant played crucial roles in articulating the principles of individual liberty, equality, and the social contract. Locke's *Two Treatises of Government* (1689) posited that individuals possess natural rights to life, liberty, and property, which governments are created to protect. These ideas significantly influenced legal traditions that later informed the concept of *ius cogens* as non-derogable principles safeguarding fundamental rights. While the Enlightenment provided the ideological foundation for universal human rights, its principles often conflict with the realities of culturally diverse contexts, raising questions about their adaptability and legitimacy.¹⁸

The American Revolution (1775-1783) marked a significant milestone in the history of human rights. The Declaration of Independence (1776), primarily authored by Thomas Jefferson, proclaimed the inalienable rights to life, liberty,

¹⁴ ANNAS, Julia. *Plato*. Sterling Publishing Company, Inc., 2009.

¹⁵ ANGLE, Stephen C. *Human rights in Chinese thought: A cross-cultural inquiry*. Cambridge University Press, 2002.

¹⁶ VILJOEN, Frans. *International Human Rights Law in Africa*. Oxford University Press, 2012.

¹⁷ ROBERTSON, John. Enlightenment and modernity, historians and philosophers. *International Journal for History, Culture and Modernity*, 2020, 8.3-4: 278-321.

¹⁸ PRATIWI, Bridging the Gap Between Cultural Relativism and Universality of Human Rights: Indonesia Attitudes. *Journal of Indonesian Legal Studies*, 2020, 5:449-478.

and the pursuit of happiness. This document, inspired by Enlightenment principles, laid the foundation for the development of democratic governance and the protection of individual rights¹⁹. Similarly, the Bill of Rights (1791) and the French Declaration of the Rights of Man and of the Citizen (1789) established legal protections that continue to influence modern human rights frameworks²⁰. These documents, while products of their time, have been reframed through the lens of contemporary norms like *ius cogens*, which emphasize universality and non-derogation²¹.

Following the devastation of World War I, the League of Nations was established in 1920 to promote international cooperation and peace. Although the League's Covenant did not explicitly mention human rights, it laid the groundwork for international efforts to address humanitarian issues, such as the protection of minorities and the prevention of human trafficking²². This marked the beginning of an evolving understanding of rights that transcend state sovereignty, paving the way for the post-World War II human rights regime.

The atrocities of World War II underscored the need for a global commitment to human rights. The United Nations (UN), established in 1945, explicitly incorporated human rights as a core objective. The Universal Declaration of Human Rights (UDHR), adopted in 1948, became a cornerstone document, articulating fundamental rights and freedoms to which all individuals are entitled. Its principles have since been codified into international treaties and recognized as *ius cogens* norms, such as the prohibition of genocide, torture, and slavery²³.

The UDHR, often regarded as the foundation of modern human rights, illustrates the tension between universal principles and cultural specificity. While it seeks to establish a common standard, critics argue that its formulation reflects

¹⁹ ARMITAGE, David. *The declaration of independence: A global history*. Harvard University Press, 2007.

²⁰ JARROW, Gail. *The Printer's Trial: The Case of John Peter Zenger and the Fight for a Free Press*. Calkins Creek Books, 2006. FINKELMAN, Paul (ed.). *The Supreme Court: Controversies, Cases, and Characters from John Jay to John Roberts [4 volumes]*. Bloomsbury Publishing USA, 2014.

²¹ HUNT, Lynn. *Inventing human rights: A history*. WW Norton & Company, 2007. DOYLE, William. *The Oxford history of the French revolution*. Oxford University Press, 2018.

²² HENIG, Ruth. *The League of Nations*. Haus Publishing, 2010.

²³ GLENDON, Mary Ann. *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*. Random House Trade Paperbacks, 2002. BIANCHI, Human Rights and the Magic of Jus Cogens. *European Journal of International Law*, 2008, 19, 3: 491-508.

predominantly Western philosophical traditions. However, regional adaptations, such as the African Charter, demonstrate the flexibility of human rights frameworks to accommodate diverse cultural and historical contexts, aligning with contemporary debates on relativism and universalism²⁴.

The Concept of Ius Cogens in International Law

Ius cogens, or peremptory norms, are international law principles universally recognized as fundamental and non-derogable. These norms hold the highest legal status and cannot be overridden by treaty or customary law. The concept of ius cogens emerged from recognizing that certain rights and obligations are essential to the international community and must be upheld under all circumstances²⁵.

The Vienna Convention on the Law of Treaties (1969) formally codified the concept of ius cogens, stating that any treaty conflicting with a peremptory norm is void. This legal framework underscores the primacy of certain fundamental principles, such as the prohibition of genocide, slavery, and torture, in the international legal order. Therefore, several human rights norms are widely recognized as ius cogens. These include (I) the prohibition of genocide²⁶; (II) the prohibition of slavery and the slave trade²⁷; (III) the prohibition of torture²⁸.

These norms represent the pinnacle of international legal obligations, reflecting a global consensus on the minimum standards of human dignity. However, their universal applicability often clashes with cultural relativism. For

²⁴ OME, E. M. The jurisprudence of protection of human rights under the African Charter on Human and Peoples' Rights. In: ODIMEGWU, I. (ed.). *Nigerian Democracy and Global Democracy*. Awka: Fab Educational Books, 2007. pp. 236-250.

²⁵ HANNIKAINEN, Lauri Antero. Peremptory norm (Jus Cogens) in international law-Historical development, criteria, present status. 1988.

²⁶ SCHABAS, William. *Genocide in international law: the crimes of crimes*. Cambridge University Press, 2000. the Genocide Convention (1948) defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. Prohibiting genocide is a peremptory norm that obligates all states to prevent and punish such acts.

²⁷ ALLAIN, Jean. *The law and slavery: Prohibiting human exploitation*. Brill, 2015. The abolition of slavery and the slave trade is a fundamental principle of international law. The Slavery Convention (1926) and subsequent international instruments underscore the universal condemnation of slavery as a violation of human dignity.

²⁸ BURGERS, J. Herman; DANIELIUS, Hans. The United Nations Convention Against Torture. A Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *VRÜ Verfassung und Recht in Übersee*, 1989, 23.1: 95-97. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) establishes the absolute prohibition of torture. This norm is recognized as ius cogens, reflecting the consensus that torture is an egregious violation of human rights that cannot be justified under any circumstances.

instance, practices such as female genital mutilation (FGM) and child marriage, while widely condemned under international human rights law, are deeply rooted in the cultural and social traditions of certain communities. As Dau²⁹ argues, the enforcement of ius cogens norms in such contexts can be perceived as an imposition of external values, creating tensions between local cultural autonomy and universal human rights standards.

The conflict between ius cogens and cultural practices raises critical questions about the adaptability of these norms in culturally diverse settings. Pratiwi highlights that, while ius cogens norms are intended to reflect universal values, their interpretation and enforcement often depend on the cultural and historical contexts in which they are applied³⁰. Bianchi highlights that the enforcement of ius cogens norms, particularly in non-Western contexts, often struggles to gain local legitimacy due to their perceived Western origins³¹. Régio de Almeida critiques the Eurocentric origins of human rights, highlighting how anti-colonial movements reshaped the universalist narrative to better reflect global diversity³². This evolution underscores the importance of counter-hegemonic contributions to contemporary rights frameworks.

This tension underscores the importance of balancing respect for cultural diversity with the protection of fundamental rights. Efforts to reconcile these conflicts often involve fostering dialogue and collaboration between international human rights bodies and local communities. For example, initiatives to combat FGM and child marriage frequently focus on education, community engagement, and the promotion of alternative practices that respect cultural traditions while adhering to ius cogens principles. These approaches illustrate how the rigid universality of ius cogens can be adapted to accommodate cultural sensitivities without compromising core human rights standards.

Despite these efforts, critics argue that the concept of ius cogens is not entirely free from ethnocentric biases. The norms often reflect Western

²⁹ DAU, International human rights standards versus cultural practices: a case against harmful cultural practices in Sub-Saharan Africa, with a specific reference to FGM.

³⁰ PRATIWI, Bridging the Gap Between Cultural Relativism and Universality of Human Rights: Indonesia Attitudes. *Journal of Indonesian Legal Studies*, 2020, 5:449-478.

³¹ BIANCHI, Andrea. Human Rights and the Magic of Jus Cogens. *European Journal of International Law*, 2008, 19, 3: 491-508.

³² ALMEIDA, Miguel Régio de. *The jurisgenesis of Human Rights: a signifier pursued by its signified, between 1945 and 1993*. *Revista Jurídica Portucalense*, 2022, 192-211.

philosophical traditions and legal frameworks, raising concerns about their legitimacy in non-Western contexts. As notes, the perception of *ius cogens* as a Western construct can hinder its acceptance and implementation in regions where cultural and legal traditions differ significantly³³.

In conclusion, *ius cogens* norms play a pivotal role in establishing universal standards of human dignity and justice. However, their interaction with cultural relativism reveals the complexities of applying these principles in a culturally diverse world. By acknowledging and addressing these challenges, the international community can work towards a more inclusive and effective human rights framework that respects cultural diversity while upholding the fundamental values enshrined in *ius cogens* norms.

Cultural Relativism in the Context of Human Rights

Cultural relativism posits that human rights and ethical standards are products of specific cultures and should be understood within those cultural contexts. This view challenges the universalist perspective, which asserts that human rights are inherent to all human beings, regardless of cultural differences. The tension between cultural relativism and universalism is central to the international human rights discourse, raising questions about the applicability, legitimacy, and enforcement of human rights norms globally.

Critics argue that international human rights norms often reflect Western philosophical traditions, making them less applicable to non-Western societies. Jack Donnelly³⁴ highlights that the principles enshrined in the Universal Declaration of Human Rights (UDHR) are deeply rooted in Western liberal values, prioritizing individual autonomy and secularism³⁵. Similarly, Luis Barbosa Rodrigues, focusing on Islamic contexts, argues that these norms often clash with

³³ BIANCHI, Human Rights and the Magic of Jus Cogens. *European Journal of International Law*, 2008, 19, 3: 491-508.

³⁴ DONNELLY, Jack. Cultural relativism and universal human rights. *Hum. Rts. Q.*, 1984, 6: 400-419.

³⁵ BINDER, Guyora. Cultural relativism and cultural imperialism in human rights law. *Buff. Hum. Rts. L. Rev.*, 1999, 5: 211. DE SOUSA SANTOS, B.; NUNES, J. A.; MENESES, M. P. Opening up the canon of knowledge and recognition of difference. In de Sousa Santos, B.(Ed) *Another Knowledge Is Possible: Beyond Northern Epistemologies*. 2007.

values that prioritize community and religious obligations, undermining their legitimacy in non-Western societies³⁶.

This critique underscores the perception of human rights as an extension of Western cultural imperialism, which can marginalize alternative cultural traditions³⁷. However, proponents of universalism contend that certain rights, such as freedom from torture and slavery, are non-negotiable and must transcend cultural boundaries.

Cultural relativists argue that this universalist imposition undermines cultural diversity and sovereignty. Paulo Meneses highlights how ethnocentric perspectives dominate the global human rights discourse, marginalizing non-Western cultural practices³⁸. Calzolari Antonio and Dal Ri argue for more inclusive frameworks that respect the unique cultural norms and practices of different societies, emphasizing that international human rights law must adapt to diverse perspectives to remain legitimate³⁹.

While cultural relativism advocates for protecting cultural diversity⁴⁰, critics warn of its potential misuse to justify practices that violate fundamental human rights. For instance, some cultural relativists defend practices such as female genital mutilation (FGM) or restrictive laws against LGBTQ+ individuals, framing them as expressions of cultural identity. Universalists contend that such practices violate non-derogable human rights, such as the right to bodily integrity and freedom from torture. This highlights the need for approaches that respect cultural contexts without compromising fundamental human rights⁴¹.

Reconciling these tensions requires fostering intercultural dialogue and developing culturally sensitive frameworks for human rights⁴². The African

³⁶ RODRIGUES, Luís Barbosa. Universalismo versus relativismo: a declaração universal dos direitos do homem e o islão. *Lusitana. Direito*, 2018, 19/20: 43–55.

³⁷ BINDER, Guyora. Cultural Relativism and Cultural Imperialism in Human Rights Law. *Buff. Hum. Rts. L. Rev.*, 1999, 5: 211.

³⁸ MENESES, Paulo. Etnocentrismo e relativismo cultural: algumas reflexões. *Revista Gestão & Políticas Públicas*, 2020, 10.1: 1-10.

³⁹ ANTONIO, Carolina Calzolari; DAL RI, Luciene. O relativismo cultural e a universalização dos direitos humanos no direito internacional público. *Revista Publicum*, 2017, 3.2: 273-285.

⁴⁰ RENTELN, Alison Dundes. *International human rights: universalism versus relativism*. Quid Pro Books, 2013.

⁴¹ FRADA, Manuel A. Relativismo, valores, direito. *Revista da Faculdade de Direito da Universidade de Lisboa*, 2010, 51: 141-192.

⁴² PEIXOTO, Érica de Souza Pessanha. Universalismo e relativismo cultural. *ENCONTRO PREPARATÓRIO DO CONPEDI*, 2007, 16.

Charter offers a compelling example of how regional frameworks can balance respect for cultural diversity with the protection of core human rights.

Taking cultural relativism into practice

Applying cultural relativism to human rights reveals the complexities of balancing respect for cultural practices with the protection of individual rights. This tension is particularly evident in debates surrounding practices like female genital mutilation (FGM)⁴³ and child marriage, which highlight the challenges of reconciling cultural traditions with universal human rights principles. As Garrido Rodríguez⁴⁴ demonstrates, European policies on immigration offer a framework for negotiating cultural diversity while safeguarding fundamental rights. Spain's strategies for cultural integration, albeit imperfect, provide a model for aligning universal human rights with localized realities.

FGM is a deeply rooted cultural practice in many African and Middle Eastern societies, often regarded as a rite of passage and a means of preserving family honor. However, international human rights organizations widely condemn FGM as a violation of women's and girls' rights, particularly their rights to health, bodily integrity, and freedom from torture. Lorena Alves Diniz argues that addressing FGM requires culturally sensitive approaches, such as engaging local leaders and promoting alternative rites of passage⁴⁵. These strategies respect cultural values while protecting individual rights, illustrating the importance of dialogue in implementing universal norms.

Similarly, child marriage exemplifies the clash between cultural practices and international human rights standards. In many communities, child marriage is justified by social norms and economic considerations. However, it undermines children's rights to education, health, and freedom from exploitation. In addressing child marriage, localized solutions such as community-driven advocacy and education campaigns have proven effective in bridging cultural values and international norms. Efforts to combat child marriage in South Asia demonstrate the necessity of engaging local communities and religious leaders

⁴³ BOYLE, Elizabeth Heger. *Female genital cutting: Cultural conflict in the global community*. JHU Press, 2003.

⁴⁴ GARRIDO RODRÍGUEZ, P. Law and public policy about immigration and cultural diversity in Spain and in the European context. *Revista Jurídica Portuguesa*, 2014, no. 16, pp. 82–112.

⁴⁵ DINIZ, Lorena Alves. *O Relativismo Cultural e a Aplicação Universal dos Direitos Humanos no Âmbito do Direito Internacional*. Monografia de Curso. 2023.

to promote legal reforms and raise awareness about its harmful effects⁴⁶. These initiatives highlight the value of culturally tailored solutions that respect traditions while prioritizing children's rights⁴⁷.

Both cases underscore the challenges of applying universal human rights norms in culturally diverse contexts. Critics of universalism argue that these interventions often impose external values on local communities, eroding cultural autonomy. Proponents, however, emphasize the non-negotiable nature of fundamental rights, such as freedom from torture and exploitation. Reconciling these perspectives requires a nuanced approach that combines intercultural dialogue with practical strategies for change.

Instruments like the African Charter on Human and Peoples' Rights (ACHPR) exemplify efforts to integrate cultural relativism into human rights frameworks. By incorporating African values and traditions, the ACHPR demonstrates how human rights can be adapted to reflect local contexts while upholding universal principles. This model highlights the importance of collaborative approaches in addressing tensions between cultural relativism and universalism.

Can cultural relativism affect the international protection of human rights? The Universalism-Cultural Relativism Debate

The debate between universalism and cultural relativism lies at the heart of international human rights discourse, characterized by competing perspectives on the applicability and legitimacy of human rights norms. Universalists argue that certain human rights are inherent to all human beings and must be upheld regardless of cultural differences. Conversely, cultural relativists contend that human rights must be interpreted and applied within cultural contexts to respect diversity and avoid cultural imperialism.

Universalists emphasize the need for a common standard that transcends cultural boundaries, protecting the dignity and rights of all individuals⁴⁸. They

⁴⁶ UNICEF. *Early marriage a harmful traditional practice a statistical exploration 2005*. Unicef, 2005. BAYISENGE, Jeannette. Early marriage as a barrier to girl's education. Retrieved on, 2010, 1.10: 2010. WALKER, Judith-Ann. Early marriage in Africa-trends, harmful effects and interventions. *African journal of reproductive health*, 2012, 16.2: 231-240.

⁴⁷ JAIN, Saranga; KURZ, Kathleen. *New insights on preventing child marriage: A global analysis of factors and programs*. International Center for Research on Women (ICRW), 2007.

⁴⁸ DONNELLY, Jack; WHELAN, Daniel J. *International human rights*. Routledge, 2020.

argue that cultural practices violating fundamental human rights, such as female genital mutilation (FGM) and child marriage, cannot be justified on cultural grounds. Donnelly and Whelan highlight how relativism can be misused to legitimize harmful practices, emphasizing that certain rights, such as freedom from torture and non-discrimination, are universally applicable. Similarly, John J. Tilley underscores the essential role of universalism in shielding individuals from cultural practices that harm their dignity and well-being⁴⁹. While Donnelly emphasizes the risks of relativism in justifying harmful practices, Mutua's critique of Western hegemony reminds us of the need for cultural legitimacy in global human rights standards.

On the other hand, cultural relativists advocate for a more context-sensitive approach, emphasizing that human rights must resonate with local communities to be meaningful and effective⁵⁰. Makau Mutua⁵¹, a leading proponent of relativism, critiques universalist frameworks as reflecting Western cultural hegemony. He argues that human rights should be interpreted in ways that respect local practices and cultural contexts, highlighting the importance of engaging communities to foster understanding and acceptance.

Reconciling these perspectives involves seeking common ground through intercultural dialogue. By fostering mutual understanding, intercultural dialogue identifies shared values that underpin human rights while respecting cultural specificities. This approach promotes co-construction of norms that are both universally valid and culturally relevant. For example, initiatives addressing FGM have combined education and advocacy with culturally sensitive solutions, such as alternative rites of passage, demonstrating how universal principles can adapt to local contexts.

The **African Charter on Human and Peoples' Rights (ACHPR)** exemplifies an effort to integrate cultural relativism into human rights frameworks. Reflecting African values, the ACHPR balances collective and individual rights while emphasizing community solidarity and cultural heritage. This approach highlights

⁴⁹ TILLEY, John J. Cultural relativism. *Human rights quarterly*, 2000, 22.2: 501-547.

⁵⁰ MERRY, Sally Engle. *Human rights & gender violence: Translating international law into local justice*. University of Chicago Press, 2009.

⁵¹ MUTUA, *Human rights: A political and cultural critique*. University of Pennsylvania Press, 2002.

the potential for culturally sensitive human rights frameworks that respect diversity without compromising fundamental principles.

Efforts to bridge the universalism-relativism divide must prioritize dialogue and collaboration. While universalists insist on the non-negotiable nature of certain rights, relativists remind us of the importance of context and cultural legitimacy. The challenge lies in creating frameworks that are inclusive and adaptable, ensuring that human rights remain both effective and representative of the diverse societies they aim to protect⁵².

Conclusion: is there an *ius cogens* in the face of cultural relativism?

The tension between cultural relativism and universalism raises profound questions about the applicability of human rights in a culturally diverse world. While cultural relativists emphasize respect for diversity and context-specific interpretations of rights, universalists advocate for the existence of fundamental principles that transcend cultural differences. This debate is particularly pertinent to *ius cogens norms*, which are recognized as non-derogable and binding on all states, regardless of their cultural, religious, or political backgrounds. These include prohibitions on genocide, slavery, torture, and crimes against humanity.

Ius cogens norms represent an attempt to establish a global consensus on the most egregious violations of human dignity. They embody the principle that certain rights are so fundamental that they cannot be overridden, even by cultural practices. However, their universal application often encounters resistance in culturally diverse contexts. For instance, international condemnation of practices like female genital mutilation (FGM) and child marriage demonstrates the challenges of enforcing these norms in communities where such practices are deeply rooted. Critics argue that such interventions risk imposing external values, thereby undermining cultural sovereignty. Reconciling these tensions requires a nuanced approach that balances the universality of *ius cogens* norms with cultural sensitivity. Intercultural dialogue and collaboration with local communities are crucial for developing human rights interpretations that uphold fundamental principles while respecting cultural diversity. For example, initiatives to address

⁵² SANTOS, Boaventura de Sousa; NUNES, João Arriscado; MENESES, Maria Paula. Opening up the canon of knowledge and recognition of difference. *Another Knowledge is Possible*. London: Verso, XIX-LXII, 2007. MURRAY, Rachel. *Human rights in Africa: from the OAU to the African Union*. Cambridge University Press, 2004.

FGM have successfully engaged community leaders to promote alternative rites of passage, respecting cultural traditions while protecting individual rights.

This dialogue-based approach aligns with frameworks like the African Charter on Human and Peoples' Rights (ACHPR), which integrates collective and individual rights and reflects African cultural values. Such models illustrate how culturally relevant human rights frameworks can uphold universal principles without alienating local communities.

In conclusion, cultural relativism undeniably influences the international protection of human rights, challenging the notion of *ius cogens* as universal values. This ongoing debate underscores the need for mutual understanding and respect to create a more inclusive and effective human rights framework. By fostering dialogue and co-creating norms, the international community can honor the diversity of human cultures while steadfastly protecting the core values that define our shared humanity.

Moving forward, the international community must prioritize inclusive frameworks that combine universal principles with cultural adaptability, ensuring that human rights protect all individuals while honoring the richness of human diversity.

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