

The Nature of Human Rights: Both Universal and Relative or neither Universal nor Relative

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ABSTRACT: *This paper critically discusses the arguments put forward by Jack Donnelly and Michael Goodhart as to the nature of human rights. While Jack Donnelly argues that Human Rights are relatively universal, his counterpart Michael Goodhart debates that Human Rights are neither relative nor universal. The former has analysed the nature of human rights by referring to several concepts of universality out of which he claimed that functional, international legal and overlapping consensus universality are defensible whereas anthropological and ontological universality are indefensible. In doing so he has also asserted that functional and international legal universality are contingent and relative, while overlapping consensus universality is more universal than relative. Goodhart has responded by stating that use of such adjectives will create unnecessary confusion and avoiding them will rather validate the analysis of the different conceptual facets of Human Rights.*

KEYWORDS: *Conceptual Universality, Substantive Universality, Functional Universality, International Legal Universality, Overlapping Consensus Universality, Anthropological Universality and Ontological Universality.*

I. INTRODUCTION

Jack Donnelly and Michael Goodhart, two of the outstanding contributors in the field of Human Rights, have come up with opposing views as to the nature of Human Rights in a series of articles. While Jack Donnelly argues that Human Rights are relatively universal, his counterpart Michael Goodhart debates that Human Rights are neither relative nor universal. The former has analysed the nature of human rights by referring to several concepts of universality out of which he claimed that functional, international legal and overlapping consensus universality are defensible whereas anthropological and ontological universality are indefensible.¹ In doing so he has also asserted that functional and international legal universality are contingent and relative, while overlapping consensus universality is more universal than relative.² Goodhart has responded by stating that use of such adjectives will create unnecessary confusion and avoiding them will rather validate the analysis of the different conceptual facets of human rights.³ An attempt to critically discuss the arguments as to the nature of human rights put forward by the above mentioned two scholars in their respective articles has been taken below.

II. CONCEPTUAL AND SUBSTANTIVE UNIVERSALITY

By conceptual universality Donnelly has referred to the notion that all human beings are entitled to certain universally held rights by virtue of being human beings.⁴ In other words, these rights are equal and inalienable.⁵ On the other hand, by substantive universality Donnelly has envisaged that whether there is a universal list of human rights, particularly those enshrined in the Universal Declaration Human Rights.⁶

Goodhart has dissented with Donnelly on both counts. As regards the concept of conceptual universality, he has argued that some of the members of human species may not have the capacity to utilize some of the human rights theories which are based on autonomy.⁷

¹Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 (2) HRQ 281.

²ibid 289.

³Michael Goodhart, 'Neither Relative nor Universal: A Response to Donnelly' (2008) 30 (1) HRQ 183, 189.

⁴ Donnelly (n 1) 283.

⁵ibid.

⁶ibid.

⁷Goodhart (n 3) 186.

Also Goodhart has opined that despite showing commendable commitment to assess questions relating to various types of universality of human rights, Donnelly has rather hastily reached a conclusion that human rights are relatively universal.⁸

As Goodhart seems to have put the general thrust of his critiques on the second count, Donnelly has based his counter-argument on it. He has strived to clarify that Goodhart misconstrued his argument and in fact Donnelly had determined the relative universality of the nature of human rights after due consideration.⁹

III. FUNCTIONAL, INTERNATIONAL LEGAL AND OVERLAPPING CONSENSUS UNIVERSALITY:

As Donnelly has contended functional, international legal and overlapping consensus universality to be defensible, arguments and counter-arguments put forward by Donnelly and Goodhart in these regards will be discussed together.

Even in modern Europe where human rights ideas are believed to have first blossomed, human rights were not broadly acknowledged not long back.¹⁰ With the advent and expansion of capitalist markets and bureaucratic states, the situation worsened further.¹¹ The need for searching new effective remedial responses was realised.¹² Gradually the claims of equal and inalienable human rights became the centre point of attention and when one group was benefited from them, other groups realised the utility of such human rights and demanded such rights for themselves.¹³ Globalization permeated the same threats to human dignity as experienced in Europe all across the world and it was ultimately evidenced that human rights came up with the most pragmatic solution to this new set of standard threats to human dignity.¹⁴ This is what Donnelly has described as Functional Universality. He propounded it to be universality of contingent and relative nature.¹⁵

Goodhart has rejected Donnelly's contention arguing that characterizing human rights as functionally universal but contingent and relative at the same time would rather frustrate the lucidity of the concept.¹⁶

Donnelly has given counter-argument that since at present human rights work as a protector against certain common threats posed to human dignity in most parts of the world, it is not an overstatement to call them functionally universal but contingent and relative.¹⁷ He further argues that unless one construes universal to be applying everywhere or for all time, there is no scope for confusion.¹⁸

Once again Donnelly has come up with the proposition that international legal universality refers to a concept of human rights which is contingent and relative, albeit universal.¹⁹ As the human rights enumerated in the Universal Declaration have been endorsed worldwide, he has upheld international legal universality as defensible.²⁰ In fact such has been its comprehensiveness that even movements for social justice and of political opposition have often been vindicated by embracing the language of human rights.²¹

Goodhart has struck down the concept of international legal universality of human rights on the ground that qualifying such universality as contingent and relative would diminish the value of human rights.²²

However, Donnelly has strived to defend himself by arguing that states may not render such widespread acknowledgement to these rights in future like they did not in the past.²³ Also there are a number of

⁸ibid.

⁹Jack Donnelly, 'Human Rights: Both Universal and Relative (A Reply to Michael Goodhart)' (2008) 30 (1) HRQ 194, 197.

¹⁰Donnelly (n 1) 287.

¹¹ibid.

¹²ibid.

¹³ibid.

¹⁴ibid.

¹⁵ibid 288.

¹⁶Goodhart (n 3) 187.

¹⁷Donnelly (n 9) 198.

¹⁸ibid.

¹⁹Donnelly (n 1) 289.

²⁰ibid 288.

²¹ibid.

²²Goodhart (n 3) 187.

²³Donnelly (n 9) 198.

states who even in the contemporary world continue to deny these international human rights norms and therefore characterizing it as universal but contingent and relative would convey a more accurate sense.²⁴

Historically the traditional Asian values, Western values and African values have all been considered to be inconsistent with human rights but nevertheless they also have been somehow interpreted to be propagating human rights by all the respective governments.²⁵ However, Donnelly has claimed that the moral equality of all human beings is pervasive in almost all the prominent comprehensive doctrines across the world and therefore, they have set the platform on which a common conception of political justice has been embedded.²⁶ This is what Donnelly has called as overlapping consensus universality and termed it as more universal than relative.²⁷ Although Goodhart has not contradicted with the substance of the argument of Donnelly but found his conclusion to be perplexing.²⁸

IV. ANTHROPOLOGICAL AND ONTOLOGICAL UNIVERSALITY

Many consider human rights to be universal believing that most societies and cultures have historically always endorsed them.²⁹ Donnelly has termed this concept as anthropological universality.³⁰ Then he has gone on to peruse the nature of such universality of human rights to ascertain whether practically there is any such kind of universality and concluded that the claim of anthropological universality is indefensible.³¹

According to Donnelly although ontological universality may apparently appear to be similar to overlapping universality, they differ as a single transhistorical foundation would set the base for the former, while the latter possesses multiple and diverse foundations.³² After dissecting the conception of ontological universality, Donnelly has found it to be unpersuasive and politically unappealing and therefore claimed it to be indefensible.³³

Goodhart has argued that if functional and international legal universality can be defended as universal but contingent and relative, so can be anthropological and ontological universality.³⁴ The rationale which he shows behind it is that consensus as to the Universal Declaration has reached a transnational level recently.³⁵

In response Donnelly came up with the proposition that his focus was specifically on the pre-modern or pre-colonial societies and therefore he was vindicated in his stance.³⁶

V. SOME OTHER DIVERGENCES OF OPINIONS

Goodhart has claimed that various aspects of human rights can be successfully discussed even without referring to the terms relative and universal.³⁷ He has further added that human rights have gained legitimacy because of their worldwide appeal.³⁸ However, Donnelly has opined that unless it turns out to be absolutely impossible to elucidate these terms, it is wiser to keep referring to them as they are likely to have better appeal to the general people.³⁹ He has also argued that the legitimacy of human rights can never be the outcome of their worldwide appeal.⁴⁰ Donnelly has asserted that he did not find any justification of human rights endorsed in one place to have legitimacy in other places of the world.⁴¹ Therefore, he has concluded, 'global appeal is a consequence, not a cause or ground, of the legitimacy of human rights.'⁴²

²⁴ *ibid.*

²⁵ Donnelly (n 1) 290.

²⁶ *ibid* 291.

²⁷ *ibid.*

²⁸ Goodhart (n 3) 188.

²⁹ Donnelly (n 1) 284.

³⁰ *ibid.*

³¹ *ibid* 285-286.

³² *ibid* 292.

³³ *ibid* 293.

³⁴ Goodhart (n 3) 188.

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ Goodhart (n 3) 189.

³⁸ *ibid* 193.

³⁹ Donnelly (n 9) 201.

⁴⁰ *ibid* 202.

⁴¹ *ibid.*

⁴² *ibid.*

VI. CONCLUSION

After careful exploration of the arguments put forward by Jack Donnelly and Michael Goodhart, it can be said that although they disagree as to the use of the terms relative and universality, there is some sort of convergence as to the basic substances of their arguments. Nevertheless, Donnelly and Goodhart have ultimately failed to agree on the basic nature of human rights. Having said that it is probably better to let the readers decide who they should give their verdicts for.

BIBLIOGRAPHY

Secondary Sources

- [1] Donnelly J, 'The Relative Universality of Human Rights' (2007) 29(2) HRQ 281
- [2] Donnelly J, 'Human Rights: Both Universal and Relative (A Reply to Michael Goodhart)' 2008 30(1) HRQ 194
- [3] Goodhart M, 'Neither Relative nor Universal: A Response to Donnelly' 2008 30 (1) HRQ 183