

Redefining Universality

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Abstract

At the 2005 World Economic Forum Tony Blair spoke of an emerging 'global consensus' on the need to spread democracy, canvassing universality. The 2005 World Social Forum promoted diversity and the pluralism of cultures. How can there be a single human rights solution for countries as diverse as Brazil, the UK and North Korea? This article suggests there can be and that there is one. It challenges the view that the universality of rights can be translated into Western imperialism. Conversely, it confronts the criticism that allowing culture to dictate rights supports backwardness. Universality can be reconciled with cultural relativity. There can be no true universality without cultural relativity.

1. Introduction

At the 2005 World Economic Forum (WEF) Tony Blair spoke of an emerging 'global consensus' on the need to spread democracy.¹ Held at the same time, the World Social Forum (WSF), expressed its distaste for the WEF and had as its slogan 'Another world is possible'. According to one organiser 'We believe that new worlds will be built through diversity and the pluralism of cultures. There can never be a single solution for countries as different as Brazil, Kenya, India and North Korea'.² Even within a single state, there is the argument that democratic deliberation should not aim to establish uniform rules in all areas of public life, but to guarantee the cultural security of minority groups. As has been confirmed by courts worldwide, recently by the UK House of Lords in *A, X and Y and Others v Secretary of State for the Home Department*,³ human rights attach to humans, not simply to citizens of states. In turn, since cultural practices and beliefs may be seen as part of what it is to be human, arguably states should promote cultural relativity and refrain from interfering with an individual's cultural preferences by enforcing universal standards. But the fact that cultural practices and beliefs may be regarded as part of what it is to be human, is also precisely why there can and must be some measure of 'global consensus' and 'universality'. This is because, since an individual realises his personality through his culture, respect for individual differences through liberal theory should entail a respect for cultural differences.⁴ There

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¹'Blair Asks for Global Consensus', BBC News, 26 January 2005, available at: <http://news.bbc.co.uk/2/hi/business/4208665.stm>.

² Statement by Fatima Melo, a WSF organiser representing the Association of Brazilian NGOs, 'World Social Forum gets under way', BBC News, 27 January 2005, available at: <http://news.bbc.co.uk/2/hi/business/4208197.stm>.

³ [2004] UKHL 56.

⁴American Anthropological Association, 'Statement on Human Rights', (1947) 49 *American Anthropologist* 539.

can be no true universality without a consideration of cultural differences or at least cultural perceptions, and there can be no promotion of cultural relativity unless there is 'universal' respect.

As may be discerned by the divergent approaches of the WEF and the WSF the term universality on the one hand and cultural relativity on the other suggests that the two cannot be reconciled. This is a position which I seek to challenge. The universality-relativity debate has existed for many years and the issue remains highly controversial. The focus of this paper will be on how cultural relativity may be regarded as coming under the 'umbrella' of universality, hence a redefinition of universality.

2. Universality v Cultural Relativity

The universality-relativity debate has been understood in terms of absolute, universal rights as opposed to contingent, relative rights or as imperialism in imposing universal rights as opposed to the self-determination of peoples and associated relative rights.⁵

The advocates of universality claim that international human rights must be the same everywhere. On the other hand advocates of cultural relativity claim that the content of rights depends on the cultural context in which such rights are practiced. At its strongest the relativist position focuses not only on diversity but suggests that the extent of diversity is such that no trans-cultural ideas of rights can be found or agreed upon. It follows that any attempt by a culture or state to suggest common rights is not justified as it is an attempt to impose on other cultures or states ideas particular to it. In this form therefore cultural relativity contradicts a basic premise of the human rights movement, that there are certain fundamental rights applicable to all.

Before we can attempt to resolve the debate between universality and cultural relativity it is necessary to examine in more detail how universal standards are perceived.

3. Facade Universality, Globalisation and Cultural Relativity Misperceptions

International human rights instruments, at least *prima facie*, attempt to set universal standards, the prime example being the Universal Declaration of Human Rights (UDHR), which makes no explicit concession to cultural variation. The UDHR and the UN Covenants, namely the UN International Covenant on Civil and Political Rights 1966⁶ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights⁷ (ICESCR) adopted in 1966 have traditionally been associated with Western arrogance and cultural imperialism. This is even though, for instance, Article 27 of the ICCPR provides that members of ethnic, religious and linguistic minorities have the right, in community with other group members, 'to enjoy their own culture, to profess and practice their own religion, or to use their own language'. The reason for the suspicion towards such instruments can be found in the historical conditions surrounding the creation of particular human rights instruments. Most African and

⁵ Steiner and Alston, *International Human Rights in Context*, 2nd edn (Oxford: Oxford University Press, 2000), at 366.

⁶ 999 UNTS 171.

⁷ 993 UNTS 3.

Asian states did not even participate in the formulation of the UDHR because, as victims of colonisation, they were not members of the UN. Furthermore, the heightened attention given to civil and political rights rather than social, economic and cultural rights and the separation of such rights into two distinct categories, which I will explore later, can be viewed as supporting the argument that universal human rights are not truly universal. This suggests there is a facade universality.

The universality-relativity debate cannot be divorced from the issue of globalisation and its effects. The term 'globalisation',⁸ by which I mean the globalisation of markets, capital, communication and technology, suggests uniformity and a concentration of power in a 'global' entity. If ever power or 'governance' were contained or containable within the sphere of the bounded nation, this seems no longer the case. However in reality it is not an issue of the dissolution of power toward 'the global sphere', which would imply uniformity and universality; rather power is seen as inhering more and more in other entities 'besides' the nation-state - sub-national and international regions and trans-national corporations are the most cited repositories.⁹ At the same time though, some argue that the global market and so-called trans-national corporations remain primarily connected to national economies. Both these observations are correct to the extent that the national economies to which such corporations are connected are overwhelmingly those of North America, Japan and Europe. Globalisation seems, then, not to extend to large parts of the globe and when it does, such as through the transfer of investment funds to less developed countries, the result is to infuse debt and poverty. The harmful effects of globalisation, as noted by the UN High Commissioner for Human Rights in the context of economic and social rights, has pushed a vast number to the margins of society, economically and socially.¹⁰ Specifically, globalisation is not to do with a newly-created world but with a continuing imperialism¹¹ and does not, as the term suggests, reflect a consensus nor uniformity.

The relevance of globalisation in this context is that the global dominance of Western institutions such as the World Bank has caused less developed countries to cling to sovereignty for fear of losing their cultural identities. It is this domination that causes uneasiness in non-Western human rights advocates.¹² The disaffection with globalisation has been in part translated into disaffection with the universality of human rights and a belief that universality fails to respect cultural relativity and state sovereignty. The appearance of a facade universality of human rights means that universal human rights are viewed as culturally illegitimate. As a reaction to the negative effects of globalisation and facade universality there has been a resurgence of movements for cultural identity, and paradoxically while some cultural relativists have embraced sovereignty there has also been the growth of regional organisations that limit state sovereignty.

This state of affairs has not only meant a non-Western disapproval of the universality of human rights but has led Western countries to identify culture with tradition and backwardness, as distinct from universal 'civilisation', and as a barrier to

⁸ Fitzpatrick, 'Globalisation and the Humanity of Rights', (2000) 1 *Law, Social Justice and Global Development Journal* available at: <http://elj.warwick.ac.uk/global/issue/2000-1/fitzpatrick.html>.

⁹ Steiner and Alston, *supra* n. 5.

¹⁰ For example, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, 25 November 1999, E/C.12/1999/SR.3.

¹¹ Steiner and Alston, *supra* n. 5.

¹² Pannikar, 'Is the Notion of Human Rights a Western Concept?', (1982) 120 *Diogenes* 75.

modernisation, industrialisation and globalisation. Such a misperception of culture, as being associated with backwardness and the past, is particularly troubling in the aftermath of 11 September 2001, which has seen a rise in cultural prejudices against those of the Islamic faith.

4. Individualism v Collectivism

Social, economic and, more relevantly for our purposes, cultural rights are often regarded, whether correctly or not, as collective rights and have often been identified as being the main concern of non-Western states, while Western states are regarded as prioritising negative, individual, civil and political rights. This apparent division is evident from the debates during the Cold War between the Communist world and Western democracies. The latter charged the former with violating what they termed basic rights, particularly those of a civil and political character. In response the former accused the West of violating what they termed the more important economic and social rights, arguing that the political and ideological structures of Communist states pointed towards a different understanding of rights. The focus on civil and political rights may be translated into a rejection of communism and the prioritisation of the liberal, free-market economy. It is apparent that individual rights that promote the economic advantages of the United States and Western Europe have been afforded greater protection. This has been done politically through international human rights instruments, evidenced by for instance the separating of the two categories of rights into two separate UN Covenants and even legally as, arguably, national courts in Western states have accorded a closer, higher level of scrutiny and less deference with respect to non-economic, civil libertarian rights than social, economic-proprietarian rights.¹³ It follows that human rights appear to have been marginalised and politicised by Western countries to satisfy the demands of the market economy. As a consequence human rights have been appropriated to the detriment of certain peoples, shown by for instance concerns expressed by the UN High Commissioner for Human Rights in its report to the Economic and Social Council in 1999.¹⁴ However, on closer examination, it is not entirely realistic to associate social, economic and cultural rights with non-Western countries and civil and political rights with Western countries. The establishment of welfare states across Europe (and the US to an extent) should not be disregarded. Furthermore the lack of protection of social, economic and cultural rights should not be regarded purely on the grounds of their being incompatible with a liberal democracy. The traditional reluctance of the socialist left in Europe, the US and elsewhere to use an individualistic concept like rights to frame what were seen as collective welfare entitlements, played a part in preventing the incorporation of social, economic and cultural rights as legally enforceable rights.

In fact the separation of rights into two such categories is itself unrealistic. While such a discussion is outside the scope of this paper, suffice to say that certain cultural rights may be seen as part of more traditional civil and political rights such as the right to freedom of expression. While it is true that civil and political rights are generally afforded greater protection politically and legally, as distinct from cultural rights (as

¹³ 'The Double Standard', in Abraham and Perry (eds), *Freedom of the Court: Civil Rights and Liberties in the United States*, 7th edn (Oxford: Oxford University Press, 1998), 7.

¹⁴ *Supra* n. 10.

well as, for the sake of completion, social and economic rights), cultural rights are constitutionally protected and to an extent enforceable in South Africa and India but also in Western democracies, such as the right to use a language of one's choice under section 22 of the Canadian Constitution, a right to participate in a culture of one's choice which may be implied in the 1st Amendment of the US Constitution and a right to equal access to cultural education under paragraph 13 of the Preamble to the 1946 French Constitution.

As suggested above the traditional separation of the two categories of rights has sometimes been regarded in terms of a separation between individual and cultural rights. The debate between universality and relativity can be translated into a tension between individualism and collectivism or communalism, since promoters of universality emphasise respect for the individual while cultural relativists may be seen as stressing the importance of the cultural group of which the individual is a member. Essentially a failure to recognise cultural relativity in certain contexts suggests a failure to recognise collective or communal rights. There are many definitions of culture but one that seems to encapsulate many, if not all, appears to be that culture in a general sense refers to collective identities.¹⁵ However framing cultural rights in terms of collective rights vesting in a collectivity or group fails to recognise that human rights can attach to individuals, such as those in the examples above in the context of the Canadian, US and French Constitutions. Therefore the distinction between individual and collective rights may be more apparent than real. Conversely, it is true that framing cultural rights in terms of individual rights can ignore the fact that individuals are attached to their community and individuals within that community share a concern for the need to preserve the distinct cultural and linguistic identity of a cultural group. For this reason a possible approach could be the recognition of a right to cultural membership, requiring that important communal goods should be available to citizens.¹⁶

It is evident that universality and cultural relativity can be reconciled under a different concept of cultural rights. But given the facade universality that exists and the disapproval of cultural relativists of that universality together with, on the other hand, the misperception of cultural values as anti-modernisation, how can any true consensus or universality exist?

5. Global Standards – A New Universality?¹⁷

Firstly, a distinction should be made between anti-globalisation and the existence of global 'human' standards. The fact that globalisation has led to a form of imperialism does not mean that there cannot be an integration of human rights values. In fact the onset of globalisation and its adverse effects economically and otherwise means that an observance of basic human rights standards is ever more imperative. What non-Western states oppose is not the integration of basic values *per se* but the domination of Western values, whether politically, economically, socially, culturally or legally. This opposition

¹⁵ Kuper, *Culture: The Anthropologists' Account* (Cambridge MA: Harvard University Press, 1999) at 2.

¹⁶ Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989); and, Malik, 'Communal Goods as Human Rights', in Gearty and Tomkins (eds), *Understanding Human Rights* (London: New York: Mansell, 1996).

¹⁷ Pollis, 'Towards a New Universalism: Reconstruction and Dialogue', (1998) 16 *Netherlands Quarterly of Human Rights* 5.

should not overshadow the consensus that can and does exist. It is often overlooked that while many non-Western countries may have been excluded from the drafting of the UDHR, Asian, African and Latin American voices have actively supported and contributed to the discourse on human rights. Some have suggested it was from indigenous peoples that European settlers derived 'concepts such as democratic rule, federal forms of government, constitutional checks and balances, freedoms of expression, thought, conscience, association and assembly'.¹⁸ It can at least be discerned that ideas about human dignity and respect from indigenous societies have contributed to human rights law. Importantly, non-Western states have generally not rejected the UDHR, there are references to human rights within their domestic constitutions and regional instruments have developed evidenced by for instance the adoption of the African Charter on Human and Peoples' Rights¹⁹ and also the Inter-American framework.²⁰ Such states tend to interpret rather than reject human rights norms when there are disagreements. States such as China, regarded as emphasising relativity and collectivity rather than individuality, do support the notion of human rights and are in favour of strengthening international co-operation in the realm of human rights but believe this should be on the basis of mutual understanding and seeking a common ground, while reserving differences.²¹ There can be a contribution to universality rather than an outright rejection of it.

As highlighted above, it appears that while North-Western states have sought to impose their own values, the South has retracted towards sovereignty and cultural relativity. But the choice need not be between facade universality, that is Western imperialism, and cultural relativity, that is state or cultural sovereignty. Proponents of universality must concede that many basic rights allow for culturally influenced forms of implementation and realisation. Furthermore, human rights must also take into full account the individual as a member of the cultural group of which he or she is a member, whose sanctioned modes of life shape his or her behaviour. At the same time cultural relativists should recognise that certain common values may be discerned from within different cultures. A weak relativism can be supported therefore, which emphasises that while human rights are held to be largely universal they may be subject secondarily to cultural modifications. The aim should be to legitimise universality by redefining it in terms of basic values shared by all as well as to accommodate cultural relativity, diversity and pluralism by taking into account and accommodating, where possible, cultural differences. A complete relativism of values without common agreement on the basic principles of human rights risks aggravating fragmentation. Conversely, common respect for cultural relativity can be an inherent component of universality.

The movement for balancing universality with cultural relativity should no longer be regarded as one of Western modernisation against non-Western cultural norms. It should not be overlooked, on either side, that Western states have cultural values themselves which vary from state to state and more generally, all cultures, whether

¹⁸ Wright, *International Human Rights, Decolonisation and Globalisation: Becoming Human* (London: Routledge, 2001) at 44.

¹⁹ African (Banjul) Charter on Human and Peoples' Rights 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), entered into force 21 October 21 1986.

²⁰ American Declaration of the Rights and Duties of Man (OAS Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992)); American Convention on Human Rights 1969, OAS Treaty Series No. 36 (1969).

²¹ For example, Human Rights in China, Information Office of the State Council (Beijing, 1991).

Western or non-Western, evolve and adapt to social changes. All cultures can and do become modernised. This does away with the myth that non-Western or less developed states are steeped in the past and that cultural or related religious values, such as the values of Islam, cannot evolve. The social position of women is one example: women have become increasingly more economically independent from men not only in Europe and the West but all over the world. Links may be discerned between different cultural values. A fundamental position under Western-dominated human rights treaties is that all human beings are equal in worth and dignity, regardless of gender, religion, or race. Verse 4:34 of the Qu'ran for instance speaks of honour and dignity for 'humankind' and 'children of Adam' without distinction as to race, colour, gender or religion. This shows there can be Islamic legitimacy for basic human rights.²² Just as other cultures are capable of adaptation and evolution, Islam, including the law of Islam, is capable of evolution as stated by the Government of Pakistan in an official report in 1955.²³ It may be that universality is an inappropriate term, associated as it now is to a facade universality or, at worse, Western imperialism. In reaching a consensus the aim should be to determine which cultural values are common to and cross between cultures. In other words, the aim is to find a cross-cultural solution to the definition of basic rights. Essential in this process is cultural legitimacy through consensus.²⁴

6. Redefinition Through Consensus

Dialogue is the key to achieving consensus and there is the need for an international portal whereby states can put forward their views of what universal standards should consist of and also to highlight criticisms of other state practices. According to Pollis,²⁵ the Western doctrine of human rights should be subjected to a cultural discourse. As stated above, the main reason why developing or non-Western countries or cultural minorities tend to view international human rights instruments as Western creations is not so much to do with the content of these rights but their application, which is seen by non-Western states as a misapprehension of cultural standards. Furthermore, part of the disapproval of the application of human rights standards in the West may be attributable to a misunderstanding of Western cultural values. While rights may attach to individuals by reason of their being individuals, and thus arguably inalienable, their formulation within states or communities may vary and must be applied according to their cultural context. But at the same time other cultures may influence – rather than dominate – in a positive way, hence the evolution of cultures. Through dialogue, shared values may become universal and may be safeguarded, and a consensus can be reached.

While it may be difficult for certain cultures to understand other cultures – the US ban on peyote use and Western abhorrence of female circumcision²⁶ are indications of this – it is still possible to accept and respect cultural practices by examining the values underlying those practices, so far as basic rights are safeguarded. Criticisms should

²² This is argued in the context of human rights for women by An-na'im, 'Human Rights in the Muslim World', (1990) 3 *Harvard Human Rights Journal* 13.

²³ Report of the Commission on Marriage and Family Laws, appointed by the Government of Pakistan by a Resolution, 4 August 1955.

²⁴ An-na'im, *supra* n. 22.

²⁵ Pollis, *supra* n. 17 at 20.

²⁶ Evidenced by, for example, the US federal criminal statute Federal Prohibition of Female Genital Mutilation Act 1995, particularly section 116.

therefore take into account and respect, as far as possible, cultural identities. Taking the examples stated, firstly, the ban on peyote use in the US was stated to be in the public interest, thus there was a balance of the interests of society against cultural interests.²⁷ The practice of female circumcision, still widespread in Africa and in a more mild form in some countries of Asia, has attracted much controversy. However where cultural practices, such as certain or most forms of female circumcision, infringe basic rights such as the right to health (female circumcision can produce menacing health problems) or even the freedom against torture (female circumcision may be regarded as torture, as indicated by the term 'genital mutilation' used to describe the practice) then under a new definition of universality the basic rights would prevail. On the other hand male circumcision, for instance, which arguably does not entail the same degree of physical injury to males as female circumcision, is tolerated. But on a sensitive topic such as this, in order to avoid the view that Western abhorrence of female circumcision is a form of Western cultural domination, the triumph of basic rights, over subjection to female circumcision, can only come through the conscious participation of African and other women.²⁸ The guarantee of basic rights could also go some way in protecting those who are oppressed by the culture or cultural practices of their community.

In reaching consensus through dialogue the contribution of women and also children and minority groups is essential, as it is within the promotion of the rights of these groups that tensions exist between universal principles, cultural relativity and the reality of their economic, political or symbolic subordination in many cultures of the world. In the case of women's rights for instance, Muslim countries and even the Vatican have on numerous occasions condemned what they have viewed as the imposition of Western norms of individual autonomy on the rest of the world.²⁹ It is instructive to note the feminist movement because the universality-relativity divide is particularly evident within the debates over women's rights as human rights; any discussion of women's rights under international law is permeated by the issue of cultural relativity. On the one hand the feminist movement is concerned with a universal standard of human rights rather than deference to cultures, as culture and religion are often cited as justifications for denying women a range of basic rights. However, on the other, feminists place emphasis on the importance of participation, of listening to and accounting for the particular experiences of women, not simply women generally. The movement is therefore concerned with respecting both commonality or universality and relativity.

In the process of the redefinition of the universality of human rights it may be helpful to conceive of three levels at which human rights can be formulated.³⁰ At the top there are 'basic' or 'universal' rights, which entail general concepts. As to the content of these rights, the UDHR contains basic universal standards. Furthermore certain common values may be discerned in other international human rights instruments but also under domestic constitutions, including the right to life and human dignity. Next there is the 'interpretation' of human rights. There may be varying interpretations

²⁷ *Employment Division v Smith*, *Supreme Court of the United States*, 17 April 1990, 494 US 872 (1990) (6-3 result).

²⁸ A view expounded by the Association of African Women for Research and Development (AAWORD), specifically in 'A Statement on Genital Mutilation', in Davies (ed.), *Third World-Second Sex: Women's Struggles and National Liberation* (London: Zed Books, 1983), 217.

²⁹ *Women: 2000: Gender Equality, Development and Peace for the Twenty-First Century* (New York, June 2000).

³⁰ Donnelly, *International Human Rights*, 1st edn (Boulder: Westview Press, 1993).

according to the cultural context in which the right is applied, so long as the basic concept is guaranteed. Finally there may be considerable variation in the 'implementation' of rights.

7. Accommodating Culture Through Rights

Regional instruments, like the African Charter on Human and People's rights, do express an important degree of cultural variation. At the heart of the redefinition of universality, applying basic universal standards alongside cultural relativity, is the issue of equality. Essentially universality means applying universal standards to all, that is, pursuing equality for all. However, applying equal rules to all can have adverse consequences such as the 'equal' application of apartheid laws according to race. Furthermore it is socially unrealistic to argue that equal process, through consistent, universal standards will lead to equal outcomes. Redressing societal inequality is more complex given social, economic and cultural realities.

It follows that formal or procedural equality does not necessarily provide substantive equality, indeed the two may conflict. This is the age-old equality-diversity debate. Equality is such a vexed issue that opinions differ among different philosophers namely Dicey, Jennings, Nozick, Raz, Rawls, Dworkin, and the list continues. Nevertheless, one factor seems clear. Respect for individual differences through liberal theory entails a respect for cultural differences. It is a social reality that equal protection does not necessarily mean actual equality as it fails to take into account diversity. The existence of positive rights is evidence of this recognition. However caution must be exercised because cultural relativity has been taken to support the view that different cultures should be treated differently, just like claims to equality have paradoxically been cited in the name of racism and, at worst, apartheid and persecution. Cultural differences should therefore be approached in terms of the 'accommodation' of cultures to avoid the risk of reinforcing cultural prejudice.

Examining dilemmas at the domestic level helps to indicate that it is possible to achieve universality alongside cultural relativity. Britain for instance regards itself as a multicultural society and the individuality and diversity debate has been raised time and again. One issue has been whether the existence of religious schools is positive in helping to preserve certain cultures or whether this allowance of diversity inflames cultural intolerance. A solution to the dilemma could be to view the issue in terms of promoting both diversity and equality by for instance providing that all persons must attend an educational establishment where universal educational standards are taught, with the option of attending religious or cultural studies. Accommodating both helps to instill a national or state identity alongside a cultural identity. This approach has been taken by several states in the context of language, as for instance the return of Gaelic to schools in Scotland.

While critics believe teaching regional languages can lead to the destruction of the unity of the nation, examples of the promotion of state identity alongside cultural identity, in essence a 'dual identity', may be seen in countries as diverse in size as India and Mauritius, which both contain a multiplicity of cultures and ethnicities. In such states a dual identity may be discerned in terms of, for instance, an association with the Indian state as well as an association with a particular religion or culture, such as Hinduism or Islam. While codes of laws are in existence for particular cultures, certain

basic laws are open to all.³¹ In Mauritius although Creole is the official language, the education of other languages in the cultural context is also encouraged. The use of a single unifying language, rather than leading to the loss of identity, may be seen as a means for achieving dialogue between the different components of society leading to an appreciation of and respect for other cultures. Such a dual identity is no doubt also felt by cultural minorities in Western states. It should be noted also that just as cultural minorities are integrated and are influenced by state cultures, conversely state cultures evolve through influences by minority cultures. This should not be viewed as a cultural dilemma by states but rather as a natural process in the evolution of cultures.

It follows that cultural relativity and values can be accommodated alongside universality and universal values. The existence of inequalities between persons of different cultures internationally, but also within states and communities in private life and as part of governmental policies – the indefinite detention of foreign but not British terrorist suspects in the UK is a stark example – shows that essential in this process is promoting cultural tolerance. This is key to redefining universality and particularly necessary in the aftermath of 11 September 2001.

8. Conclusion

The fact that discussion occurs in the arena of civil society at the WSF, in the Southern hemisphere, and by heads of state and corporate executives at the WEF, in Western Europe, highlights the divisions between industrialised and less developed or even non-Western countries but also between ‘social’ society and political, economic society. This is reflective of the division created by the effects of globalisation. In a changing world divided not by states but by interests (whether commercial, economic, or otherwise), ideologies (whether religious or otherwise) and cultures, the issue of globalisation cannot be divorced from the need to redefine the universality given the emergence of global values. However, the adverse effects of globalisation need not be an obstacle to the promotion of ‘global’ human rights values. There already exists a form of consensus on universal standards, which needs to be reasserted in order to strengthen the protection of human rights. At the same time there can be no true universality without a consideration of cultural relativity and the recognition that the interpretation and implementation of human rights may vary. As long as basic rights are safeguarded the promotion of cultural respect and legitimacy must be seen as part of the guarantee of universal human rights.

³¹ For example, as confirmed by the Supreme Court of India in *Mohammed Ahmed Khan v Shah Bano Begum* (1985) 2 Sup Ct Cases 556, in the context of former wives who had not remarried and were not able to maintain themselves.