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Human Rights, the Rule of Law, and Development in Africa

Edited by Paul Tiyambe Zeleza and
Philip J. McConaughay

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Introduction

The Struggle for Human Rights in Africa

Paul Tiyambe Zeleza

Africa's Political Transitions

As several chapters in this book note, the changes in human rights cultures and regimes in Africa in the 1990s were facilitated by the astounding political transformations that took place.¹ This was a period of bewildering extremes, which saw the rise of mass movements and mass revolts driven by democratic and developmentalist ideals, as well as mass murder and mass poverty perpetrated by desperate regimes and discredited global agencies. The pace of change was so rapid, the cast of players and stakeholders so numerous that it is difficult to tell a coherent story, certainly not a single or simple story beloved by those who see Africa as one, either because they have no time for understanding its astonishing diversities or they wish to impose an emancipatory Pan-African solidarity. Yet the imagination seeks a narrative structure, the mind an explanatory framework that makes sense of Africa's encounter with this most tumultuous of decades, with its triumphs and tragedies, its accomplishments and failures, its passionate pronouncements and painful reversals, its uneven developments and complex demands. What are some of the common experiences and expectations that unite this decade as a historical moment for African peoples in all their splendid diversities?

At the beginning of 1990, all but five of Africa's 54 countries were dictatorships, either civilian or military. Levels of political competition and political participation were low, so that the citizenry exercised little choice in selecting their leaders and determining public policy, and leadership turnover was negligible. Before 1990 no African leader had left office through electoral defeat, those that did leave were mostly ousted in coups, while three—Senghor of Senegal, Ahidjo of Cameroon, and Nyerere of Tanzania—left voluntarily, although Ahidjo tried to shoot his way back to power a couple of years later. By 2000 the vast majority of African countries had introduced political reforms and were at various stages of democratic

Chapter 1

Restraining Universalism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse

Bonny Ibhawoh

Let me begin with an anecdote that underscores the salience of the theme of this chapter. The story is told of a British anthropologist who, in pursuit of his grand career aspirations, decided to travel deep into the most obscure fringes of Africa for his research on a “primitive tribe.” This “primitive tribe” of Africa, he had been told, was so remote and distant that it had made no prior contact with civilization. So, armed with his safari outfit, camping boots, and research tools, he sets out for this exotic part of Africa, through vast virgin jungles and isolated deserts. Finally, he arrives at this most isolated and obscure African village, tired and exhausted, but glad that he has at last fulfilled his lifelong ambition of discovering another “lost tribe” of Africa. He is still wondering how these “primitive, stone-age tribesmen” will react to their first contact with civilization when a scantily clad lad walks up to him and says in impeccable English, “Sir, you look very tired, do you want a Pepsi?”

The moral of this anecdote cannot be lost on anyone who lives in our age—an age in which a broad range of trends and forces changing the face of the earth has made our world truly a “global village.” The reality of globalization in today’s world is that unprecedented dispersion of varied political, social and cultural phenomena across national boundaries have compressed time and space in a way that territorial distance has become of limited significance. This overwhelming force of globalization manifests in almost every facet of human endeavor: in communications through satellite television; in economics with the virtual integration of the world financial system; and in consciousness, with people concerning themselves with issues like human rights and biodiversity in a way that transcends spatial borders. Such is the reality of globalization that much as enthusiastic

anthropologists may try—fewer “lost tribes,” removed from the rest of the world, remain in Africa or elsewhere—remain to be discovered.

Although globalization manifests itself in many ways, it is with the “globalization” (or to use the language of the discourse, “universalization”) of human rights that my chapter is concerned. On no other theme is the “globalization of consciousness” more obvious and contentious than on the theme of human rights. Human rights have become a veritable battlefield where the tensions and contradictions of globalization have been elaborately played out in the debate over whether human rights are universal or whether they are culturally relative. Indeed, the debate over the universality or cultural relativity of human rights has for the most part of this century, dominated the global discourse of human rights.

At the core of the debate is whether modern human rights conceptions are of universal character and applicability or whether they are culturally relative—that is, dependent on socio-cultural contexts and settings. Simply put: Are human rights of universal viability and applicability or are they better understood and evaluated within specific social and cultural contexts? What level of cultural specificity can be accommodated within the emerging global human rights regime to accord it cultural legitimacy within various societies? This debate precedes partly from the various international human rights documents, particularly the United Nations instruments on human rights, which, in spite of the obvious Western influence in their formulation, declare their contents to be universal, inalienable and cross-culturally valid. Also implicit in this debate is the tension between “collectivist” theorists who place the community above the individual in their conception of human rights and the “individualist” theorists who place the individual above the community.

The contending arguments in the universality versus cultural relativity debate have been quite extensively examined elsewhere and it would serve little purpose to restate them in detail here.¹ The object here is to broadly review the discourse on the cultural relativism of human rights and the relevance of the Africanist contribution to this discourse within the context of the globalization of human rights and the quest at enhancing the cross-cultural legitimacy of the emerging universal human rights regime. This chapter seeks to outline some of the major arguments in the Africanist discourse on cultural relativism with reference to their relevance in understanding the concept of human rights and its relationship with cultural orientations in particular societies, and specifically, the contemporary African state.

Rights, Dignity, or Distributive Justice?

It is significant that our discourse on the cultural relativity of human rights begins with a contextual definition of the meaning of human rights, for

without a well-defined concept of human rights, it is indeed difficult to proceed to analyze the concept. What precisely are human rights? Is the meaning, which attaches to the term, definite or can it be validly subjected to varied interpretations without distorting its essence?

Elementary as these questions may seem, they are at the core of most contemporary studies of human rights. Many writers have argued that although the broadly defined human values which underlie the concept of human rights may be universally shared, a distinction must be made between the moral standards of human dignity, which all cultures share, and human rights that are enforceable by individuals against the state. The concept of human rights, it is argued, is essentially a modern Western creation founded on historical developments of the Enlightenment period, the French and American Revolutions, and ultimately the 1948 Universal Declaration of Human Rights. Therefore, any reference to the concept of human rights before 1948 would be anachronistic.

Bassam Tibi (1990) notes for instance that many scholars tend to confuse “human rights” for “human dignity.” He states, that if one is talking about the latter, there is no doubt that fully developed notions of human dignity exist in many traditional non-Western cultures. However, the modern concept of human rights stems from the contemporary articulation of legal entitlement, which individuals hold in relation to the state. He goes further to point out that the absence of the concept of human rights in certain cultures and contexts is not peculiar to non-Western societies. Medieval Europe, like traditional African or Asian societies also had no inkling of human rights in the modern sense. The main argument here is that the idea of human rights, as rooted in modern society is an entirely new concept, distinct from previous notions of human dignity.²

Rhoda Howard (1990a,b), in response to arguments for an African concept of human rights, states quite categorically that the African concept of human rights is actually a concept of human dignity, that it defines the inner moral nature and worth of the human person and his proper relations with society. Human dignity and human rights are therefore not coterminous as dignity can be protected in a society that is not based on rights. In her words:

There is no specifically African concept of human rights. The argument for such a concept is based on a philosophical confusion of human dignity with human rights, and on an inadequate understanding of structural organization and social change in African society. (1990b: 23)

Jack Donnelly (1982) gives the debate a whole new dimension when he distinguishes between the concepts of distributive justice and of human rights. He argues that distributive justice involves giving a person that which he is entitled to (his rights). Unless these rights are those to which the individual is entitled simply as a human being, the rights in question

will not be human rights. In Africa for instance, rights were assigned on the basis of communal membership, family, status, or achievement. These were therefore, strictly speaking, not human rights.

Although it may be useful to distinguish between the abstract ideals of human dignity or distributive justice and the more precise legal principles of human rights, we must not overlook the close connection between these sets of concepts and the ways they reinforce each other. Indeed, we may argue that the whole debate over the distinction between human rights, human dignity, and distributive justice arises from a failure to appreciate and put in historical context the evolution of the idea of human rights. There has been a tendency by some scholars to conceptualize human rights within the narrow sense of modern legal language, the emphasis being on the strict legal definition of the term rather than the idea that underlies it. This approach is problematic because it tends to emphasize change while ignoring underlying continuities. A more historical approach to the study of the evolution of the contemporary concept of human rights will find no difficulty in drawing the link between traditional notions of human dignity or distributive justice and the modern idea of human rights which are, in fact, merely contextual reinterpretations of the age-long notions of defining human worth and value. The object is to understand and appreciate the distinct historical contexts in which this idea has manifested.

Seen from this perspective, it becomes difficult to accept the view that the concept of human rights is a notion created only three centuries ago by philosophers in Europe and given a stamp of universal legitimacy in 1948. Rather, it becomes apparent that what was unique about the Enlightenment and the writings of the French and American Revolutions (now often identified as the origins of human rights) was not the idea of human rights itself but the discussion of human rights in the context of a formally articulated philosophical system.

The argument that human rights are enforceable whereas the entitlements that derive from principles of human dignity are not also fails to recognize the need to place in social and historical contexts, the idea and meaning of rights. In traditional African societies for example, there were no clear cut distinctions between religious values, moral precepts, and laws—and so the question of legal entitlement distinct from moral and religious considerations could not have arisen. These were all interrelated parts of a more or less homogenous cosmology. However, such traditional societies had their own legal institutions and law enforcement procedures, which, though different from those of present day states, were nonetheless effective within their social and political contexts. Thus, the rights and obligations which derived from such religious, moral and cultural values associated with human dignity in traditional society, (which were enforced for the benefit of both the community and the individual), can validly be considered the contextual equivalents of the modern concept of legal rights.

This can provide a basis for the cross-cultural understanding of the contemporary meaning of human rights.

Human Rights and Cultural Relativity

The philosophy of cultural relativism is neither new nor peculiar to human rights discourse. While several philosophers have argued the "ethical relativity" of human nature, social anthropologists for the most part of this century have been preoccupied with the discourse on the cultural relativity of social values, precepts, and norms.³

Even the term "cultural relativism" has lately become controversial. Many of those who advocate more cross-cultural expression in the understanding and practice of human rights see themselves more as "cultural pluralists" rather than "cultural relativists." The latter term is seen as a form of typecasting or "human rights name calling" that has had the effect of stigmatizing those who challenge the universalizing trend of the human rights corpus (Mutua 2002). "Cultural relativism" is employed here without such biases. It is simply descriptive of the wide-ranging positions of those who critique the human rights corpus for what they consider its cultural exclusivity. In general, the doctrine of cultural relativity holds that moral codes and social institutions reflect a vast scope of cultural variability and that such variations should be exempt from the criticism of outsiders. The doctrine is founded on the notion of communal autonomy and self-determination, which holds that there is infinite cultural variability in human society and no absolutes. In specific relation to human rights, the doctrine of cultural relativism holds that different societies within different social and historical contexts have evolved unique attitudes to the concept of human worth, human dignity or human rights (Donnelly 1984).

Claims of cultural relativism however, show a great diversity in meaning and substance. Therefore, any evaluation of such claims must be sensitive to this diversity. In general, proponents of the cultural relativity of human rights argue that human rights as conceived in the West are not necessarily applicable to Third World and non-Western societies because their philosophical basis is not only different but indeed opposite. Whereas Western conceptions are based on the notion of the autonomous individual, many non-Western conceptions do not know such individualism (Shivji 1989: 16). It has been frequently stated by cultural relativists, that the classical Western liberal notions of human rights emphasize the primacy of individual political civil rights while most non-Western, Third world traditions place greater emphasis on the community basis of human rights and duties, on economic and social rights and on the relative character of human rights. Marxist/socialist ideas on the other hand, highlight economic and social rights and duties that are grounded on collectivist principles. The cultural diversity reflected in these categories has proved a vexing

issue for those approaching the study of human rights from a global comparative perspective.⁴

In his discourse on the "non-Western viewpoint of human rights," Prakash Sinha argues that the current formulation of human rights contains three elements, which reflect Western values and makes it ill suited to some non-Western societies. First, the fundamental unit of the society is conceived as the individual, not the family. Second, the primary basis for securing human existence in society is through rights, not duties. Third, the primary method of securing rights is through legalism where rights are claimed and adjudicated upon, not through reconciliation, repentance or education (Sinha 1981:77).

The universalism-cultural relativism debate raises a lot of theoretical questions, which have been approached by different scholars from various historical and legal perspectives. Lone Lindholt (1997: 26) has categorized the discourse on the universality or cultural relativity of human rights under various schools according to geographical and cultural boundaries. She contends that the tendency toward the more radical theory of universalism can be found among the Americans. Rhoda Howard (1990b: 12) whom she identifies as a representative of the American school, claims with particular reference to the African context, that human rights ought to be universal although she also admits that seen in an empirical perspective, "cultural variations do indeed affect people's perception of human rights." James Nickel (1987: 44-45), in his theoretical study of the concept of human rights, similarly concludes that the claims of universality and inalienability of human rights are plausible for some specific rights but that strong claims of universality and inalienability were not valid for many other rights.

Many who oppose arguments for the cultural relativism of human rights, fear that a relativist position condones or even approves of customs such as female genital mutilation, the subordination of women and minority groups, arbitrary killings, torture and trials by ordeal. It is also feared that recognizing the legitimacy of the cultural relativity of human rights will undermine the entire universal human rights movement. These fears have largely informed the tension between the doctrine of cultural relativity and international human rights. Against this background, Donnelly has categorized the doctrine of cultural relativism into *strong cultural relativism* and *weak cultural relativism*.

Strong cultural relativism holds that culture is the principal source of the validity of a moral code or rule. In other words, the presumption is that rights and other social practices, values, and norms are culturally determined, but the universality of human nature and rights serves as a check on the potential excesses of relativism. Weak cultural relativism on the other hand, holds that human rights are *prima facie* universal, but recognizes culture as an important source of exceptions in the interpretation of

human rights.⁵ Donnelly's conclusion is that, rather than a wholly universal approach, human rights discourse should apply what he terms "weak cultural relativism," where culture is an important consideration without leaving out completely the aspect of universality (Donnelly 1989).

In the same vein, Albert Tevoedjre (1986) declares that there are certain universally acceptable norms for the protection of people's rights and that these universal norms form a fundamental core of human rights. On their part, Lars Rehof and Tyge Trier (1990: 52) argue that empirically, there exists a core of universally applicable basic principles, which govern the relationship between the state and its citizens. To that extent, we can talk about some basic universal standards of human rights. At the same time however, they recognize that different human rights are considered important and fundamental at different points in time and under different circumstances.

As may be expected, the debate on the universality of human rights principles has, more often than not, centered on the Universal Declaration of Human Rights (UDHR) and its subsequent conventions. While the ideological presumption of the universality of human rights principles may be the subject of contention, there seems to be more agreement on the point that certain human rights concepts have assumed universal validity with the introduction of the UDHR in 1948. However, even this assumption has its critics, perhaps the most famous of which is the American Anthropological Association (1947: 539) which in its oft quoted reaction to the draft proposal for the Universal Declaration of Human Rights in 1947 held that:

Standards and values are relative to the culture from which they derive . . . that what is held to be a human right in one society may be regarded as antisocial by another people. . . . If the [universal] Declaration must be of world wide applicability, it must embrace and recognize the validity of many different ways of life. . . . The rights of man in the Twentieth Century cannot be circumscribed by the standard of any single culture, or be dictated by the aspirations of any single people. (my emphasis)

Several scholars have since echoed this position. Antonio Cassese (1990), in his incisive theoretical discourse on the universality of human rights in relation to the UDHR, argues that the Universal Declaration and the two international covenants do establish human rights rules in universal scope but that since human rights are both conceived and observed differently, "universality is, at least for the present, a myth."

What is evident from the trend of the discourse on the universality and cultural relativity of human rights is that it reflects a great diversity of the views of contributors. The debate spans from arguments for an ideal, if not utopian notion of absolute universalism, to arguments for a purely relativist view. Most writers have found it more useful to adopt a middle course approach. On the one hand, it is recognized that universality exists to some extent, at least in relation to some basic human rights concepts and princi-

ples, particularly those that border on the sanctity of human life and dignity. On the other hand, it is also accepted that some space must be left open to allow for cultural variations and adaptations of human rights norms. In effect, the legitimacy of the different human rights and the priorities claimed among them is necessarily a function of context.

This indeed appears the most reasonable option. To enhance its legitimacy, the emerging universal human rights regime must draw upon the cultural peculiarities of each society. In one culture, the individual may be venerated as the primary bearer of rights, while in another, individual rights may be harmonized with those of the community. Yet, underlying these two conceptions must be recognition of the intrinsic value of the human being within the society. Thus, because different people in different parts of the world both assert and honor different human rights demands, the question of the nature of human rights, must to some extent, ultimately depend on the time, place, institutional setting and the other peculiar circumstances of each society.

"African Values" and the Cultural Relativism of Human Rights

The developing world has set its imprint on human rights thought in the 1990s, both by making human rights more socially oriented and also by questioning the focus on the individual that has characterized the human rights discourse in the West. The arguments for the cultural relativity of "Asian values" and lately "African values," in the conception and interpretation of human rights have been central to this trend. The discourse on the cultural relativity of human rights from the Africanist perspective has attracted considerable attention although there remain differences in opinion on the articulation of the Africanist position in relation to the contemporary human rights corpus.

Issa Shivji (1989), in one of the earlier Africanist contributions, argued that one can hardly talk of an African philosophy of human rights because there is very little written by Africans and Africanist scholars on the conceptual and philosophical foundations of human rights in Africa. What exists is simply an African ethno-philosophy of human rights. In his view, the philosophical discussions, which may have certain relevance to Africa, are largely Western and its Marxist critiques. Josiah Cobbah (1987: 309-10) expresses the same view when he argues that, despite the increase in the discussion of human rights in Africa, very little exists in the form of literature that approaches the idea of human rights from an African perspective. He insists that what most Africans have written on the subject tends to be an attempt either to show that the Western concept of human rights exists in African cultures or to reflect Western-style condemnation of the abuse of human rights in Africa.

It is significant to point out, however, that this position has changed since Shivji wrote in 1989 and Cobbah in 1987. Quite a number of works have recently been done by Africans and Africanists on the philosophy of human rights in Africa (An Na'im and Deng 1990; Abayomi 1993; Mutua 1995). Besides, even the so-called discourse on "African ethnophilosophy of human rights" has over the years provided a fitting basis for the articulation of what can appropriately be described as an African philosophy of human rights. Indeed, several scholars have advanced, from a range of interdisciplinary perspectives, the arguments for a distinctive Africanist perspective to the discourse on the cultural relativity of human rights.

The central themes in these arguments have dwelt on the philosophical foundations of the African concept of human rights and how this concept contrasts with the western notions and institutions, which were subsequently extended to the continent in the colonial era. To understand the Africanist discourse on the cultural relativity of human rights in Africa, however, it is necessary to draw attention once again, to the argument by some writers that the contemporary concept of human rights is a modern development which has its roots in the universal declaration of human rights and was thus alien to traditional societies in Africa or elsewhere.⁶ Some of these writers have suggested that the concept of human rights as legal entitlement, which individuals hold in relation to the state, simply did not exist in traditional African societies. As indicated earlier, they argue that what is usually put forward as human rights concepts in traditional Africa is nothing more than the notion of *human dignity* and worth which exist in all preindustrial societies.

It is argued that all human societies including those in Africa have gone through a stage when, because of the low level of productive forces, collective ownership of the means of production and the communal organization of society were necessary for subsistence (Eze 1993: 82). This "communal" social structure naturally allowed for the development of humanistic ideals that did not necessarily equate with the modern conception of human rights. Any argument for a traditional pre-colonial concept of human rights is therefore only a question of confusing "human dignity" with "human rights." Even at that, it has been further suggested that, to the extent that modernization or Westernization has reached into, and transformed traditional communities in Africa, traditional approaches to guaranteeing human dignity for all their worth would seem objectively inappropriate for the modern African nation state. To continue to base human rights policy on the "communal" model of traditional Africa would be to ignore the changes that have occurred and are occurring in the way Africans live.

Another variant of this school of thought is the argument that traditional Africa, as indeed most premodern agrarian societies, did not evolve perceptions of human rights because these societies did not recognize the concept of a "human being" as a descriptive category to which some

inalienable rights were attached. Instead, persons were defined by social status or group membership. Thus, traditional societies generally did not recognize rights held simply because one is a human being (Donnelly 1982). The kind of social relationship between the state and the individual on which the concept of human rights is based was therefore never created within the context of such traditional societies (Mutua 1995). Human rights, were thus alien to traditional African societies (as they were to feudal Europe), until Western modernizing incursions dislocated community and denied newly isolated individuals access to the customary ways of protecting their lives and human dignity.⁷ Indeed, human rights as defined by many liberal scholars, are understood as individual claims against the state as founded in the Universal Declaration of Human Rights and in this sense there is only one conception of human rights and that is Western (Shivji 1989: 16).

In contrast to these positions, several African and Third World writers have argued that the philosophy and conceptions of human rights are neither exclusive to Western liberal traditions nor relevant only with reference to post-1948 developments. They reject the notion that the concept of human rights, having been originated, developed and refined in the West was thereafter "transplanted" to Africa and the rest of the world. This view has been variously described as paternalistic, inherently ahistorical and philosophically bankrupt.

Asante, for instance, rejects the notion that human rights concepts are peculiarly or even essentially bourgeois or Western, and without relevance to African and other non-Western traditions. Such a notion confuses the articulation of the theoretical foundations of Western concepts of human rights, with the ultimate objective of any philosophy of human rights, which is simply, the assertion and protection of human dignity on the basis of the intrinsic worth of the individual. This philosophy is an eternal and universal phenomenon that is applicable to western traditions as it is to African and other non-western traditions (Hannum: 1979).

Mahmood Mamdani (1990) and Paulin Hountondji (1988) both share this view. Mamdani argues generally that wherever oppression occurs—and no continent has had a monopoly over this phenomenon in history—there necessarily comes into being, a conception of rights. This is why, in his view, it is difficult to accept that the concept of human rights is a theoretical notion created only three centuries ago by philosophers in Europe. What was unique about the Enlightenment and the writings of the French and American Revolutions, (to which the origin of the contemporary concept of human rights is often ascribed), was the discussion of human rights in the context of a formally articulated philosophical system. As Hountondji puts it, Western philosophers:

produced not the thing but discourse about the thing, not the idea of natural law or human dignity but the work of expression concerning the idea, the project of its

formulation, explanation and analysis . . . in short, a draft of the philosophy of human rights. (quoted in Mamdani 1990: 60)

The Africanist approach to the discourse on the cultural relativism of human rights can therefore be broadly divided into two schools. The first of these is the less radical approach, which is ideologically closer to the dominant universalist schools of the West. Proponents of this school, while arguing the validity of a uniquely African concept of human rights, also recognize the universality of a basic core of human rights. Kofi Quashigah (1991) for instance, concludes that human rights concepts, which are rooted in certain social facts that are peculiar to particular societies, cannot be expected to be universal. At the same time, he acknowledges that certain basic needs are indisputably universally ascribable to persons of every historical, geographical, and cultural background.

The second school is in more radical opposition to the universalist approach. It seeks to fundamentally challenge the Western-oriented state-individual perspective that otherwise dominates human rights discourse. The main argument here is rooted in a belief that the philosophical basis and worldviews of Western European and African societies are fundamentally different, that collectivist rather than individualistic conceptions of rights and duties predominate in Africa. Yougindra Khasualani (1983) and Makau Mutua (1995) are some of the writers in this category. The modern conception of human rights, they contend, contains three elements that are Western-oriented and makes it inappropriate to the African and other non-Western contexts. One, the fundamental unit of the society is the individual, not the family or community. Two, the primary basis of securing human existence in society is through rights, not duties. Three, the primary method of securing these rights is through a process of legalism where rights are claimed as inalienable entitlements and adjudicated upon, not reconciliation, repentance and education.

Against this background, Keba MBaye (1987:651) points out that traditional or precolonial Africa knew of human rights adapted to the political and social situations existing in that epoch. These rights as recognized and protected, must be looked at within the context of societies that were atomized and hierarchical by a caste system and at the same time unified by mythological beliefs. Within these societies, the object of law was to maintain society in the state in which the ancestors had handed it down. The concept of human rights within such social context was thus necessarily communal and humanist, fostering mutual respect and a recognition of the rights and liberties of each individual within the wider context of the community.

Makau Mutua's (1995) position is a similar one. He argues that an examination of the norms governing the legal, political, and social structures in precolonial African societies, demonstrates that the concept of rights

informed the notion of justice, which, though community centered, also supported a measure of individualism.⁸ He argues further that in traditional Africa, the concept of rights was founded not on the individual but on the community, to which the individual related on the basis of obligations and duties. Rights in this context included but were not limited to the right to political representation, which was often guaranteed by the family, age groups and the clan. Rather, the society developed certain central social features that tended to foster the promotion of both individual and collective rights. These included deference to age, commitment to the family and the community, and solidarity with other members of the community. The dominant social orientations toward rights emphasized the groupness, sameness, and commonality, as well as a sense of cooperation, interdependence, and collective responsibility.

These ideals served to strengthen community ties and social cohesiveness, engendering a shared fate and a common destiny. In these circumstances, the concept of human rights did not stand in isolation. It went with duties. For every right to which a member of society was entitled, there was a corresponding communal duty. Expressed differently, the right of a kinship member was the duty of the other and the duty of the other kinship member was the right of another (Cobbah 1987: 321). Although certain rights attached to the individual by virtue of birth and membership of the community, there were also corresponding communal duties and obligations. This matrix of entitlement and obligations, which fostered communal solidarity and sustained the kinship system, was the basis of the African conception of human rights.⁹

It has been pointed out that the philosophy behind this concept of rights and duties is based on the presumption that the full development of the individual is only possible where individuals care about how their action would affect others. Thus, in contrast with the Western conception of rights, which conceives rights in terms of abstract individualism without corresponding duties,¹⁰ the dominant African conception of human rights combines a system of rights and obligations, which gives the community cohesion and viability. This conception—that of the individual as a moral being endowed with rights but also bounded by duties actively uniting his needs with the needs of others—was the quintessence of the formulation of rights in precolonial African societies and can provide a fitting basis for the construction of national human rights regimes in contemporary African states.¹¹

These arguments for a peculiarly communal African concept of human rights, however, are confronted with their own theoretical and empirical limitations particularly in their relevance to the contemporary African societies. Rather than the persistence of traditional cultural values in the face of modern incursions, the reality in contemporary Africa—as it is in the rest of the developing world—is a situation of disruptive and incomplete

westernization, “cultural confusion,” or even the enthusiastic embrace of “modern” practices and values. In other words, the ideals of traditional culture and its community-centered values, advanced to justify arguments for the cultural relativism of human rights in the African context, far too often, no longer exists.

Although scholars have been at the forefront of exploring the cultural relativism of human rights in the African context, the assertion of “African values” gains prominence when it is articulated in the political rhetoric of African leaders and elites. It has been suggested that in asserting these values, leaders from the continent find that they have a convenient tool to silence internal criticism and to fan anti-Western nationalist sentiments.¹² Some writers have even suggested that the picture of an idyllic traditional communitarian society, has been presented by African rulers and elite “from Kaunda to Nyerere” only to hide and rationalize their own unbridled violations of human rights. In the scathing words of Rhoda Howard (1990b: 25; see also Howard 1984a,b):

Some African intellectuals persist in presenting the communal model of social organization in Africa as if it were fact, and in maintaining that the group oriented, consensual, and re-distributive value system is the only value system and hence it ought to be the basis of a uniquely African model of human rights. These ideological denials of economic and political inequalities assist members of the African ruling class to stay in power.

In similar vein, Donnelly has pointed out that arguments for the cultural relativism of human rights within the African context are far too often made by urban economic and political elites who have long left traditional culture behind. Their appeal to cultural practices is often a mere cloak for self-interest and arbitrary rule. In traditional cultures, communal customs and practices usually provided each person with a place in society and a certain amount of dignity and protection. Rulers on the continent have largely undermined this traditional protection such that the human rights violations of most African regimes are as antithetical to the cultural traditions that they idealize, as they are to the “Western” human rights conceptions that they despise. Donnelly (1984: 400) therefore cautions that:

We must be alert to a cynical manipulation of a dying, lost or even mythical cultural past. We must not be misled by complaints of the inappropriateness of “western” human rights made by repressive regimes whose practices have at best only the most tenuous connection to the indigenous culture; communitarian rhetoric too often cloaks the depredations of corrupt and often westernized elite. In particular, we must be wary of self-interested denunciations of the excessive individualism of “western” human rights.¹³

Howard and Donnelly are clearly, and perhaps quite justifiably suspicious of the political elite of African countries who use the constant refer-

ences to communal society and the primacy of socioeconomic well-being over civil and political rights, to mask systematic violations of human rights in the interests of the ruling elite.

In sum, we can identify three levels of arguments in the Africanist discourse on the cultural relativity of human rights. At the first level is the debate as to whether or not the roots and foundations of human rights conceptions are also to be found in the African historical experience. On this, it is difficult to escape the conclusion that the extreme Africanist argument for a distinctively communitarian African concept of human rights which stands in contrast with the concepts and traditions of the West or the rest of the world, has its limitations. If anything, the notion of the absolute cultural relativism of human rights comes through as a misunderstanding inspired by cultural nationalism. What its proponents see as radically distinctive communitarian African traditions and conceptions also clearly possess ideals that are universal. Much of the humanistic and communitarian values that have been exclusively ascribed to African societies also generally apply to most preindustrial societies in Europe or Asia.¹⁴

On the other hand, it is difficult to accept the equally extremist critique of some Western liberal writers of the Africanist cultural relativism, to the effect that human rights are inherently universal concepts which have found expression only in the post-feudal state (in the case of Africa, the post-colonial state), or that the concept of human rights was alien to specific precapitalist traditions in precolonial Africa. This monolithic interpretation of human rights is unacceptable. While there may be a core of universal values, which reflect inherent human worth in various societies, the broad expression of these values must necessarily vary, not only in accordance with historical circumstances, but also from one social context to another. The central difference may lie in the question: "What is the basic unit of society?" Westerners would answer that it is the individual while the African may answer that it is the extended family (Cobbah, 1987:319).

Human rights are the heritage of all mankind and the concept of human rights has been developed, struggled for, and won by different people in different historical, political, social, and cultural contexts. These struggles and victories should combine to give our contemporary understanding of human rights its essence and universal validity. There is hardly any basis for the rather sweeping assertion that traditional Africa or indeed any "pre-modern" society for that matter has made no normative contribution to contemporary Human Rights corpus. Indeed, as Minasse Haile (1984: 575) has argued:

The fact that human rights have been part of western philosophic tradition from early times does not imply that non-western societies have no equivalent conception of human rights. Written treatises on natural law or natural rights were no prerequi-

sites to conception about or commitment to human rights [elsewhere in the world].

The "African Cultural Fingerprint"

The second level of the Africanist discourse on the cultural relativism of human rights relates to the questions that have been raised over the validity and applicability to the African context, of modern human rights conceptions, as developed and interpreted in the West. In other words, even though the modern thrust and substance of human rights may have their philosophical roots in Western societies, are they definitely applicable to contemporary African states and societies?

Several Western liberal scholars contend that since all African countries have been or are modernizing on a western model which gives priority to the individual, the only conception of human rights which exists (i.e., the Western one) is of equal application to African societies whatever their historical antecedents or cultural circumstances may be. Some Africanists and proponents of cultural relativism have tended to agree with this. Edward Kannyo (1980), for instance, contends that to the extent that the Western model of the state has spread to other parts of the world, the factors which give rise to the need for constitutional guarantees and led to the evolution of the philosophy of human rights in the West have become equally relevant in other parts of the world.

Some Africanists, however, insist that in order to make it relevant to the circumstances in the continent, the content of universal human rights has to be tempered by specific African cultural experiences. Essentially, this means that the content of human rights has to bear what Mutua (1995) has described as the "African cultural fingerprint" which emphasizes the group, duties, social cohesion and communal solidarity as opposed to rigid individualism. This appears an eminently reasonable and practical approach to the issue for, indeed, one of the inadequacies of Western concepts and institutions uncritically adopted by most African states at dawn of independence was that they borrowed little or nothing from the existing traditional norms and values. For this reason, some of these colonial-engineered concepts and institutions have continued to bear little or no relevance to the distinctive needs of the postcolonial African state. This situation calls for a regime of human rights founded on the basic universal human rights standards but enriched by the African cultural experience.

It needs to be emphasized, however, that there are substantive human rights limitations even in well-established cultural practices. Cultural practices which were acceptable in times past under different social and historical contexts cannot always be expected to conform with established modern human rights orientations. For example, while slavery and trials by ordeal have been customary in many societies in Africa as in other parts of

the world, today these are cultural practices that cannot be justified on any grounds. The same applies to the practices of discrimination on the basis of sex, social status, caste or ethnic group, which were widely practiced, but are indefensible today. Yet, cultural relativism is a fact of human rights discourse and the peculiarities in cultural and ethical orientations invariably influence people's conception of rights and duties. For this reason, cultural differences may justify some deviations from universal human rights standards. However, cultural relativism must function as an expression and guarantee of local self-determination rather than as an excuse for arbitrary rule and despotism. Cultural derogation from universal human rights standards¹⁵ must be founded on authentic cultural basis with adequate alternative constitutional and other legal provisions for guaranteeing basic human dignity where cultural orientations themselves fall short of these standards.¹⁶

Reconsidering the "Full Belly Thesis"

The third level of the argument in the Africanist discourse on the cultural relativism of human rights stems from the tendency of some Africanists and African elites to stress the priority of social and economic rights over political and civil rights. The point of emphasis here is the Africanist angle to this debate that seeks to justify the curtailment of civil and political rights in the interest of the collective social and economic development within the context of the post-colonial state. Julius Nyerere, the former president of Tanzania puts this position across quite graphically when he asks:

What freedom has our subsistence farmer? He scratches a bare existence from the soil provided the rains do not fail; his children work at his side without schooling, medical care or even good feeding. Certainly he has freedom to vote and to speak as he wishes. But these freedoms are much less real to him than his freedom to be exploited. Only as his poverty is reduced, will his existing political freedom become properly meaningful and his right to human dignity becomes a fact of human dignity. (quoted in Shivji 1989: 26)

Another African leader expressed a similar view when he opined that, "one man, one vote is meaningless unless accompanied by the principle of one man, one bread." The hub of these expressed sentiments is that given the peculiar constraints of poverty and underdevelopment in Africa, economic and social rights must take precedence over civil and political rights or the state-individual perspective that otherwise dominates Western notions of human rights. This argument is often advanced as part of the larger thesis on the relativity of human rights.

However, some Western liberal scholars in disagreement with this position have argued that political and civil rights are of as much significance as economic and social rights. They disagree with the argument that politi-

cal and civil rights should wait until basic needs are secured, because civil and political rights are needed in order to implement reasonable development policies, to secure equitable distribution of wealth and promote economic growth. Civil and political rights are also needed to guarantee social and cultural rights and the maintenance of a stable social order necessary for society itself to exist. Howard (1984c: 467) has referred to the arguments for the primacy of economic rights by some Africanists as the "full belly thesis." This thesis is that a man's belly must be full before he can indulge in the "luxury" of worrying about his political freedoms.

The thesis is, however, in my opinion, a less than fair representation of the arguments of writers like Julius Nyerere. The reference point here is not so much a *full belly* as it is an *empty belly*. A man's belly need not be full for him to be concerned about his political and civil liberties, but it is important that it is not empty, either. Political and civil rights can best be guaranteed in a situation of relative economic and social stability where the people are guaranteed a basic level of well-being. This is particularly evident from the experiences in many post-colonial African states where the level of poverty is so severe and the standard of living so low that it often undermines the democratic electoral process. In some African countries, it has become common for poverty stricken rural voters to sell their votes for as little as a handful of salt or rice. For this category of Africa's poorest, the need for immediate survival surpasses any other long-term political or civil rights considerations.

This, however, is not to suggest that political and civil rights are less significant than economic and social rights or that economic and social rights parameters should solely define the human rights aspirations of African states. The point being made is that the economic versus political rights debate in relation to Africa may not be quite as simplistic as Howard portrays it in her "full belly" thesis. The post-colonial African state manifests certain developmental limitations and other peculiar characteristics that must be taken into account in any study that seeks broad interpretations of the conditions and prospects for human rights in the continent. For one, it is useful to recognize that unlike in the West, the African state commands overwhelming power and influence which stands in rather marked distinction to the non-state sphere consisting of a largely undifferentiated and vulnerable peasantry. Under such circumstances, there are significant limitations to the level of political influence which civil society can or is in a position to wield without significant social and economic improvement.

At some point in the discourse, the arguments for and against the Africanist positions on the cultural relativism of human rights becomes something of a vicious circle, very much like the classical riddle of the chicken and the egg—which came first? Just as one may ask: Political rights and economic rights—which come first? Or: Individual rights and communal rights. Which should take precedence over the other? It is perhaps in the

nature of the discourse that these questions will never be conclusively answered. Yet, as indicated earlier, one approach to addressing these questions would be to perceive human rights as a holistic and integrated concept in which civil, political, social, and economic rights constitute complementary aspects of the same broad concept. It is useful to realize that like individual and communal rights, both political rights and economic rights are interactive, interrelated and interdependent, not sequential.

An Afrocentric conception of human rights is a valid worldview. Its significance to the discourse on the cultural relativism of human rights however, demands careful consideration. Rather than being the basis for abrogating or delegitimizing the emerging universal human rights regime, it should inform the cross-fertilization of ideas between Africa and the rest of the world. The present challenge for Africanist human rights scholars generally is to articulate for the international human rights community, an African sense of human rights or dignity, which flows from the African perspective, but one that the rest of the international community can also use. With the sanctity of Western individualist paradigms of human rights being increasingly questioned, the African sense of community obligation has much to offer the international discourse on human rights, particularly in the promotion of social and economic rights.

Conclusion

Cultural relativism is a fact of human rights discourse and the peculiarities in cultural and ethical orientations invariably influence people's conception of rights and duties. To this extent, cultural differences may justify some deviations from universal human rights standards. However, cultural relativism must function as an expression and guarantee of local self-determination rather than as an excuse for oppression, arbitrary rule, and despotism.

In reality, the construction and definition of human rights norms are continuous and dynamic processes. As a dynamic process, the cultures and traditions of the world must compare notes, come to some agreement on what constitutes human rights, and seek how best these values can find some form of cross-cultural and universal legitimacy. The arguments for the cultural relativism of human rights are therefore useful to the extent that they call attention to the need for cross-cultural understanding and tolerance of differences. The great task, which confronts the international human rights movement, is how to explore and build upon the age-old processes by which different cultures have satisfied needs that we have come to identify as necessary for the nurturing of human dignity and human rights. By drawing from these varied cultural traditions, the emerg-

ing international human rights regime may be expanded and its claim to universality vindicated in an increasingly pluralistic world order.

In a final analysis, it is significant to note that the universalism versus cultural relativism debate over the legitimacy and priorities of human rights can be misleading. It is useful in so far as it calls attention to the ways in which the notions of liberty and individualism can be, and have been, used to rationalize the abuses of capitalism. It is also useful in so far as it highlights how notions of equality and collectivism can be, and have been, used as excuses for arbitrary and authoritarian governance. However, it also risks obscuring the essential truths that must be taken into account if contemporary studies of human rights are to be objectively understood and applied.

Thus, in spite of the vast theoretical and conceptual divergence on the theme, it is useful to realize that the object of human rights discourse should be the quest for a reasonable and balanced approach to human rights, which recognizes the interplay between various cultural factors in the construction and constitution of human rights. There remains an urgent need to adopt a broader view of human rights, which incorporates diverse concepts and moral experiences. It will be easier to find some harmony around the globe under a particular human rights rubric once the existence of human pluralism has been recognized, understood, and accepted. The hope is that greater cross-cultural understanding will shed light on a common core of universally acceptable rights (Renteln 1985: 540).

In closing, I find Raimundo Pannikar's (1982: 78-79) metaphor of the window particularly appropriate in illustrating the point which I argue in this chapter:

Human rights are one window through which one particular culture envisages a just human order for its individuals. But those who live in that culture do not see the window. For this, they need the help of another culture, which sees through another window. Now, I assume that the landscape seen through the one window is both similar to and different from the vision of the other. If this is the case, should we smash the windows and make of the many portals a single gaping aperture—with the consequent danger of structural collapse—or should we enlarge the viewpoints as much as possible and, most of all, make people aware that there are—and have to be a plurality of windows?

The latter choice, it seems to me, would much better serve the cause of the global human rights movement.