



## CULTURE, MEDIA & FILM | RESEARCH ARTICLE

# Universal human rights vs cultural & religious variations: an African perspective

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Received: 07 May 2021  
Accepted: 27 September 2021

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Reviewing editor:  
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**Abstract:** Abuse of human rights in Africa seems to be commonplace under the guise of culture and religion. This research explored the intersection between human rights and culture in the context of the universal human rights regime. Perceptions of differences in the interpretation of human rights were assessed with a view to finding an interface with the universal regime. The study builds on secondary data analysis using academic journals, books, and online publications. In contemporary international relations, the key question on human rights seems to be whether it is the individual rights or collective rights that should have primacy in polity governance. What is striking is that most African domestic constitutions recognize the rights of individuals. However, the non-application of this has led to discrepancies between theory and practice and this paradox is a source of bad

### ABOUT THE AUTHOR

I am a PhD candidate as well as Teaching Assistant in the Philosophical Faculty – Department of Political Science (African Studies) at the University of Hradec Kralove. Currently, I teach an undergraduate module entitled: “Non-State Armed Groups in Africa”. My research areas are in Human Rights & Democracy, International Security & Humanitarian Intervention, Comparative Politics, and Philosophy of Social Sciences. My main research interests can be summarised to lie at the intersection of Human Rights, Philosophy, Comparative Politics & Cultural Studies.

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- 4th Year Doctoral Student in Political Science (Enrolled in 2018) (University of Hradec Kralove - Czech Republic).
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### PUBLIC INTEREST STATEMENT

My paper navigates the twenty-first century competing narratives about which governance systems are best suited to protect human rights, i.e., whether we should put faith in domestic laws or whether that faith should be deposited in international jurisdictions. Crucially, an emerging global theme argues that the protection of human rights is no longer an issue to be confined within national borders.

In the case of international laws, one school of thought argues that powerful states tend to manipulate international laws at the expense of weaker states, for instance, the controversial role of the International Criminal Court (ICC) whereby the alleged war crimes committed by US and UK citizens cannot be prosecuted by this “international” Court. On the other hand, domestic laws have been found wanting, for instance, the brutal crackdowns on civil liberties by authoritarian regimes in Zambia (from 2015 to August 2021), Zimbabwe and Uganda have reinforced the view that the only remedy for such oppressive domestic laws would be to seek solace in international laws.

governance. The paper concludes that the best radar to ensure protection of citizens' rights would be the implementation of universal rights in Africa.

**Subjects: International Politics; International Relations; Political Philosophy; Political Theory; Politics & Development; Multicultural Education; History; Philosophy; Religion; Cultural Studies**

**Keywords: Democracy; diversity; globalization; rule of law; sovereignty**

## 1. Introduction

The topic of human rights has become a prominent theme in the political and social discourse in Africa regarding the essential nature of universalism and its place in the twenty-first century. The key research question that this study sought to address was the extent to which the validity of moral norms and rights should be separated from the influence of culture and religion.

The subject of human rights is a contested concept and as such, the research examined the perceived African human rights values and contrasted them with universal practices. Knowledge gaps were investigated between the positions held by cultural relativists and universalists with a view to the possibility of an interface. Prinz (2012) asserts that cultural practices have long played important roles and influenced ways of life of people. Historically, cultural practices have provided traditional guidelines on ways of life and values, and availed skills to people which in turn were passed on to future generations. However, some harmful cultural norms are still being practiced in Africa today on the pretext of restoring cultural values. Such cultural practices are incompatible with the twenty-first century United Nations (UN) interpretation of human rights values. Often, culture is conveniently used as a space in which abuses are carried out and offenses go unpunished because of their perceived cultural dimensions. These cultural practices have a detrimental effect on citizens' fundamental rights and personal development (Mbaku, 2018).

Universalists have taken issue with claims by cultural relativists that moral norms and rights emanate from cultural practices. Universalists argue from a consequentialist perspective that the morality of an action is contingent on the action's outcome, independent of the agent. Thus, for Liberals, a morally right action is one that produces a good outcome, i.e., the end justifies the means. In this context therefore, the consequences of an action outweigh any other considerations. It is in this context that universalists point out that culture is not relevant to the validity of moral rights and norms (Dworkin, 2011). From a scientific perspective, the epistemological gist of this assumption is drawn from the recurrent difference between objectivity and neutrality. In this sense, it is argued that knowledge production can only be attained if researchers and interested parties (in this case, cultural relativists), prevent their personal values and interests from influencing their work. The most viable way to achieve this lies in adhering to the benchmarks of objectivity, making the validity of scientific claims the only function of procedure and method rather than a function of the normative obligations of interested parties (Risjord, 2014).

Donnelly (2013) asserts that human rights are inalienable and universal, even with considerations of cross-cultural relativism. The key point here is that human rights are not culturally relative because culture is not the cause or a factor in the development of human rights practices. The primary sense of universality is not merely compatible with, but necessarily includes an essential element of relativity. The question is not whether human rights are universal or relative, but how human rights are. Universalists argue that the universal rights regime offers the most acceptable global standards of human rights practices that may be lacking in some African states, hence the need to apply them universally. Liberals believe that democracy and human rights reflect a universal human aspiration as espoused by Jean-Jacques Rousseau who emphasized on the necessity of civic equality within a polity (Fukuyama, 2006). The universalist viewpoint is that all peoples of the world share the same inalienable rights regardless of cultural orientation(s). In a universalist model, an individual, driven by the pursuit of self-interest, is a social unit possessing

these inalienable rights. Therefore, from a universalist perspective, strong legal compliance mechanisms beyond national borders are critical for the success of human rights protection (Donnelly, 2013). Furthermore, it is widely affirmed that all member states of the UN by the very act of joining the organization, commit themselves to the principle of universality enshrined in the UN Charter (United Nations, 1945). The universal human rights regime is therefore not a menu of options from where countries can pick and choose what they like; rather, it is a set of international obligations that all states should adhere to. All states have an inescapable mandate to ensure that whenever human rights violations occur within their jurisdiction, appropriate remedies are provided to victims in accordance with international human rights laws. Linklater (2007) points out that the reality of the twenty-first century is that the states' capacity to regulate political identities and loyalties of its citizens is gradually being subdued by the increase in global interconnectivity. Put simply, the human rights discourse transcends borders and must therefore prevail over state sovereignty (Wilfried & Stepanians, 2006).

On the other hand, however, cultural relativists argue that respect for specific elements of cultural and religious backgrounds is essential to fostering international peace, justice, and security. Cultural relativists posit that no culture is superior to any other culture in terms of their system of morality, law and religion. In the cultural relativist view, a community is the central unit of analysis and it is widely recognized that communities come first (Cowan et al., 2001). Cultural relativists contend that principles of morality are matters for the culture, and not subject to the whims of international organizations. They argue, for instance, that the tenets espoused in the Bangkok Declaration (1993) or those contained in the African Charter on Human and Peoples' Rights (1981) provide sufficient roadmaps to guide the African people on the question of human rights. Schaffer (1998) argues that in Africa, ideas about human rights have cultural underpinnings that are invisible to outsiders. From the African perspective, human rights and democracy reflect concerns about collective security and the promotion of community solidarity. It is from this connection that cultural relativists contend that tradition is not meant to be like other public institutions that pander to the majority view or to change according to the latest opinion surveys. The methodological test that Schaffer (1998) identifies here is that the conceptual categories through which we seek to understand the world draws our attention to the data that lend them substance when in fact the real test is to critically engage with the categories themselves. For instance, it is not possible to fully comprehend Africa's challenges without factoring into the equation, the history of colonization.

Given this contestation, how then do we explain the concept of evolution of human rights? For instance, to what extent is it morally and ethically justifiable to apply human rights rules to cultures that do not recognize them? Is an international rule that has been violated many times still valid since it would have supposedly become irrelevant due to non-compliance? Should ethical principles be universally applied? Are the values espoused in the universal doctrines universally relevant? What are the international legal consequences (i.e. accountability) for states that violate universal human rights? Is the agency to deal with such violations effective? These are important questions in IR that need critical analysis, open mindedness, and peripheral vision.

From the African standpoint, the call for standardization of human rights is viewed not only as a self-defeating concept but also as a potent source of conflict in IR for several reasons:

First, it can be argued from an ontological and epistemological perspective that political communities evolve at different times, so a uniform approach on human rights would tend to shoehorn that evolution instead of allowing it to grow organically. As leading sociologist Auguste Comte argued, all political communities regardless of their ideological inclinations, are capable of reflective self-deliberation (Moses & Knutsen, 2007). Besides this, no political method is self-validating because the utility of any such method depends largely on epistemological justifications. Further, universal rights are not natural or eternal but always emergent and historically specific (Cowan et al., 2001). The epistemological argument here is linked to the theory of cognitive development.

For while knowledge is crucial for human development, such knowledge should be harnessed by reason and by some form of belief system. In *Theaetetus*, Plato defined knowledge as the intersection of truth and belief, where knowledge cannot be claimed if something is true but not believed, or believed but not true (Campbell, 1883).

Second, the universal concept seems to be almost exclusively Western in disposition; therefore, it is difficult to see how far it can go in terms of conveying its ideological appeal and global reach to countries that are non-Western. Cultural relativists have taken issue with Western assumptions that free choice is central to human development; they argue that understanding the limits of freedom is what makes freedom possible, and that the principle of free choice can also mean, choosing not to be involved in any political or social discourse (Kampfner, 2009).

Third, it is argued that human rights cannot be attained universally without being founded upon equality of access to economic and social rights. Key human security issues such as food security are seemingly not being properly addressed; for instance, Europe engages in unfair resource and trade practices with Africa, e.g., the provision of state subsidies to European farmers. Subsidies may have produced results of food sufficiency in Europe, but they have led to trade inequalities for the developing nations thereby posing a threat to the kind of “harmonious global society” that the West claims to be constructing (Bill & Philip, 2011). Critical theorists such as the Marxists and the Post-colonialists may be justified in their arguments that such trade patterns risk being perceived as traces of neo-colonialism that may undermine efforts to attain equality rights. As Abraham Lincoln put it, example is not the main thing in influencing people; it is the only thing (Lincoln, 2016).

Fourth, if as claimed, a universal concept truly respects cultural diversity, then determining the human rights values and standards of other cultures arguably lies outside its competence. Cultural relativists such as Ngugi wa Thiong’o (1993) contend that universalists have not shown—at least in practical terms—that they are orientated to using consensus and toleration as the basis of their marketing strategy.

The fifth reason is that it seems contradictory for a liberal concept—the universal doctrine—to emphasize the value of self-determination and free choice while at the same time appear to justify the coercing of states into adopting liberal values, as evidenced for instance, by Western threats of aid cuts to African states that refuse to implement gay rights (Barya, 2009).

The passing of time has made this understanding of Western education on human rights in Africa difficult to sustain. Africans perceive the human rights enterprise as championing a rationalist universalism that seems to be anchored in the Enlightenment philosophy. This way, the enterprise now appears to come across as a form of European ethnocentrism, and hence as a form of domination rather than liberation (Kampfner, 2009). While cultural relativism has potential problems that may give rise to the abuse of human rights on the pretext of preserving cultural values, universalism in its present configuration has tended to favor hegemonic politics, whereby Western powers negate the validity of traditional systems of law (Josiah.A.M, 1987).

In discussing the issues articulated, this study relies on secondary data analysis using scholarly books, academic journals and online publications that relate to the twenty-first century themes on human rights, culture, and universalism.

## **2. Theoretical and conceptual arguments**

### **2.1. Conceptual arguments from cultural relativists**

Cultural relativists argue that the Western assumption that the principle of universality is a critical element in their political and economic models is only half-right at best: Africans contend that the values that underpin those models are not universal. African values are different in kind, not in degree; they are self-reliant, yet communitarian rather than individualistic – they are built on

mutual obligation, rather than the cold letter of the law (Pollis, 1996). Africans point out that it may not be realistic or even desirable to agree on a universally accepted generic definition on the interpretation of human rights because such a definition might ignore the specific interests of certain groups whose concerns may not favor a universal approach. As John Stuart Mill argued, political ideas and institutions can only become embedded and accepted within a society if they are aligned with the culture of that society. It follows then that the use of empirical evidence to locate commonalities would help bring mutual benefits to stakeholders. This approach would be akin to the principle of the “margin of appreciation” which is used by the European Court of Human Rights in Strasbourg (Gardner, 1997). Also, a failure to navigate for possibilities of a compromise would imply adherence to a notion that a universal doctrine is premised on the idea that it is a supreme concept that cannot be questioned. Therefore, the lowest common denominator approach would arguably be the most appropriate method to yield the following benefits:

- (1) The lowest denominator approach, unlike the universal approach, would provide legitimacy and strengthen global action against human rights abuses.
- (2) The lowest common denominator approach would help prevent autocratic governments’ abuse of the citizens’ rights.
- (3) The lowest common denominator approach would help curtail hegemonic action of the great powers.

(Pollis, 1996).

Compromise on this subject seems to have been lacking from Western governments because most of their governing political parties have been captured by their more extreme affiliate political parties. These powerful far-right members hold fear-mongering views on non-Western constructions which makes compromise a risky proposition for most sitting Western governments (Zakaria, 2009).

The rationale behind international politics is to harness pluralism using conceptual frameworks that capture the world through multiple, and sometimes conflicting lenses. Democracy in many ways is nothing more than a set of rules for managing conflict and coping with the multicultural challenges, and as such, overemphasizing one side of the equation could threaten the entire undertaking. More to the point, the utility of a democratic polity is devised from toleration of divergent views (Barya, 2009). Cultural relativists content that due to different social and contextual influences, reality is a social construct and, as such, truth cannot be said to be absolute because its veracity may be contingent. Further, it is argued that if implemented, a universal regime would tend to provide a fertile ground for cultural diversion diffusing into homogeneity—this position would contradict the principles and purposes of organizations such as the United Nations Educational Scientific and Cultural Organization (UNESCO) which serve as counterpoints in highlighting the essential value of cultural diversity as an avenue for successful cooperation and coexistence in IR (Huntington, 1996).

In view of the above, three important aspects that continue to draw the anti-universalist sentiments in Africa need to be investigated.

- (1) How have African values been represented in the international human rights doctrines?
- (2) Are the grey areas that Africans have identified in the universal regime being addressed?
- (3) To what extent do individual rights count in Africa? (Keohane, 1990).

Classical Realists such as Morgenthau would argue that states have a right to opt out on certain issues that may not advance their national interest because the state is the principal holder of rights and duties under international law. In addition, most states adopt policies that use the rational choice theory of utility maximization. For Realists then, states will never surrender their

autonomy and independence because sovereignty is one of the bases of the international system with roots stretching back to the Treaty of Westphalia in 1648, something that the Europeans themselves have championed over the years (Osiander, 2001). Also, Ibrahim (2013) asserts that the marginalization of Africa in IR through structural deficiencies caused by colonialization and neo-imperialism have aroused suspicion over the universal rights agenda. The concerns raised by Post-structuralists and Post-colonialists on the welfare of the subaltern sits germane with the current political and economic conditions of the African continent. The case in point is globalization, itself a brainchild of universalism. The world has witnessed unprecedented state-of-the-art scientific developments in global finance, information, communication technology and global economics. Multinational corporations operate on a global scale with satellite offices in numerous locations, many of whom are involved in arm-twisting tactics of weaker states in pursuit of profit maximization “at any cost”. With all its technological advancements, globalization is increasingly leaving more people of the global south marginalized. Inequalities created by neo-liberal capitalism such as unfair corporate trade practices, pollution from mining industries and dumping of technological and industrial waste in poor countries have exposed the dark side of globalization. Ibrahim (2013) opines that the last two decades have proven that instead of enriching society, globalization has been the key driver of social inequalities, particularly in the global south. Top-down investment has proved to be futile in uplifting the lives of the poor. Shoveling money to the 1% rich population while giving austerity to the vast majority has been a blueprint for economic disaster. Statisticians can perform their calculations and point to “economic indicators” such as Gross Domestic Product (GDP) growth, market valuations and “consumer confidence”, but if the wealth is not trickling down to the poor and the working-class people, what we get is a society where the affluent live like sultans while most of the population are turned into paupers. As a result, an average African perceives globalization simply as an enterprise that is aiming to create a world of “winners” (global north) and “losers” (global south).

However, globalization is not all doom. Specifically on cultures, Ghanaian philosopher Kwasi Wiredu asserts the view that the concept of universalism—broadly defined—is not necessarily incompatible with cultural particularities. The argument that Wiredu (1997) presents is that although certain aspects of traditions may be different, cultures still possess traits that accommodate cross-cultural interactions. From a biological perspective, humans share a common identity that makes intercultural collaborations possible. Therefore, without some common norms of thought processes, it is hard to imagine how a human community could be sustained. From the position of Wiredu (1997), it can be deduced, for instance, that the intensification of global information technology in the twenty-first century has been possible due to intercultural dialogue—a manifestation of the existence of a certain form of universalism. This illustration confirms that what unifies cultures—hence what unifies humans—is more fundamental than what makes them different. It is, therefore, not unreasonable to conclude that given this line of thought, it is possible for cultures to arrive at many concepts of universal relevance. This, however, does not suggest that cultures do not have disparities in their modes of conceptualization in some areas of their thought processes. In fact, Wiredu (1997) shuns from the wholesale idealizing of the ancient African cultures; instead, he only acknowledges aspects that are progressive and rejects those that have the potential to hamper Africa’s development. So, contrary to the contention by the dyed-in-the-wool traditionalists who suggest that conceptualization and expression are relative to different cultures, the intercultural communication is always present in the body of the biological unity of humankind. In driving his point, Wiredu (2002), elaborates this seeming paradox with two kinds of African philosophers: whereas the pre-independence Nkrumah-led pan Africanists used philosophy to advance African’s emancipation, the philosophy in post-independent Africa has tended to be embedded in interests shaped by Western philosophy. Against this backdrop, conceptual decolonization becomes a necessary tool that could enable Africans to be conscious of not feeding on unexamined assimilations of Western ideas. The decolonization question is prompted by the continued domination of Africa by foreign languages, foreign religions, and foreign political systems. By shying away from indigenous systems, Africans have accepted Western categories and

concepts that at best, do not advance their cause, and at worst, are detrimental to the continents' development agenda (*ibid*).

From an African perspective, scholars such as Ngugi wa Thiong'o (1993), Wiredu (1997), and Ndlovu-Gatsheni (2009), would be inclined to argue that Western architecture on the project of universal human rights has been found wanting due to the history of colonization and neo-imperialism that has left an enduring negative legacy in Africa. For instance, to date, Western institutions still try to justify the colonial project—a scheme that subjected the African people to various forms of dehumanisation and manipulation such as through slavery, plunder of their natural resources and cultural imperialism. Civil rights activists such as Baldwin (1983) and the post-colonial scholars such as Achebe (1958) would equally be disposed to argue that the crimes of colonial Britain, colonial France, Portugal, Belgium, Spain, Italy, and Germany are innumerable and arguably fit the strictest definition of genocide. The seemingly neo-imperialist agenda is what prompts Africans to have a mistrust perception, and hence prefer to chart their own path through their cultural identities. The ethnocentric assertion of Western scholarship that assumes the denigration of anything that is African is what unsettles the black people. It is in this context that Africans reject cultural hierarchies and seek self-identity and self-definition. By insisting on particularities, Africans seek to rediscover the authentic and unique African identities that were previously robbed from them by the colonial project, and now being threatened by neo-imperialism (Ngugi wa Thiong'o, 1993). As Chinua Achebe argued, “until the lions have their own historians, the history of the hunt will always glorify the hunter” (Achebe, 1958).

It is in this same token that Africans also doubt whether they can get fairness from international organizations: for instance, how can the UN proclaim itself as a truly just organization when some continents or regions are poorly represented within its structures? The case in point is the UN Security Council where Africa, a continent with 54 UN member states does not have a permanent seat at the Security Council. Africa's demands on this matter are well known through the Ezulwini Consensus of 2005 which argues for Africa's common position for a permanent seat at the Council and a demand for reforms for a more representative and democratic Security Council (Mbara et al., 2021). As Herberg-Rothe (2021) has argued, there can be no political democracy and social justice without relational equality in (international) society. Given such political inequalities, the question that arises is whether in fact democracy (and good governance) could be sustained without equality in the political and social sphere. It is such seemingly unjust actions that make the universal human rights regime unappealing to most Africans. Further, such actions also become a double-edged sword for the ordinary African citizen; whereby on one hand (due to these unjust international positions), African states tend to “detach” from those international institutions, while on the other hand, those same unjust international, otherwise Western conducts, provide fertile grounds for African despots to continue justifying their own bad governance rule. To illustrate this point, consider the following comments that were made by the former president of Zimbabwe Robert Mugabe when the British government condemned his undemocratic system of governance due to unreliable elections. Mugabe said:

... we cannot learn the rule of law from the British because they never introduced it here; we introduced it, they cannot be our teachers of democracy because we introduced democracy in this country, there was never any democracy here, no law and order here, no peace, no quiet, no security. We do not need Mr. Blair or Mr. Robin Cook (former British PM & former British Foreign Secretary respectively) to tell us when to hold our elections, we know when to hold them ...

(BBC News, 6 September 2019).

Coming to the issue of culture, although Bonny Ibhawoh does not seem to subscribe to absolute cultural relativism, he nevertheless wonders how human rights could possibly be universal if they originate or appeal only to a certain part of the globe (Ibhawoh, 2018). This implies that the thought processes around these universal sensibilities should be expanded beyond a narrative that

portrays the West as the originators. This portrayal of human rights as having been cast in the West is propelled by the sheer influence of power politics and Western hegemony (*ibid*). As James Baldwin put it, “ignorance, allied with power, is the most ferocious enemy justice can ever face” (Baldwin, 1983).

Ibhawoh (2018) argues that contrary to this Western narrative, Africa has, from time in memorial, played an active role in the development of human rights. For instance, it was the Africans, and not the Europeans, who advocated for the end of the slave trade and championed the decolonization process. These emancipatory missions provide evidence of an active human rights movement on the continent dating back to the ages. Furthermore, the civilization of ancient Egypt is another testimony of early African reservoirs of knowledge that influenced human development beyond the continent. To be sure, pre-colonial African traditions were embedded with elements of opulent teachings on human dignity and societal values that were imparted to society by elders through oral history, oral laws, and oral literature (*ibid*).

## **2.2. Conceptual arguments from universalists**

Critics argue that Africa is failing to make an impact on global progress because it is still stuck in the past; that it has failed to evolve and connect with a generation. A viable cultural conception—so critics argue—is not one that is static, but one that is a continually changing phenomenon that can be likened to a plan: anyone with elementary knowledge about planning will be aware that a viable plan (hence a viable culture), is not static but adaptable enough to respond to the changes in the context and environment in which it is set. One of the main difficulties with cultures is the hypocrisy that surround them, whereby they are controlled by cliques of hardline cultural elites. These elites claim to safeguard their local traditions but themselves impose a cultural dictatorship in their communities—imposing the same “dictatorship” that they allege is inherent with a universal doctrine (Mamdani, 2000). Diversity should not just be practiced between cultures but also within cultures, yet there has not been enough free play for internal cultural forces that are interested in the process of cultural dynamism and change. These scenarios marginalize the young intelligentsia and as such, foster a conservative outlook of African societies (Bill & Philip, 2011).

As David Hume also argued, a human mind is governed by desire rather than reason and as such, people tend to favor their own interests even in circumstances when the benefit to them is relatively trivial and the cost to others very large. Hume’s conception was that certain traditions might not be relied upon because they may lack sufficiency in their wider conceptions or that such conceptions may be narrow-minded at best, and at worst, the knowledge obtained from them may not be empirically robust, hence the need for continuous re-evaluation of any given system (Moses & Knutsen, 2007). In largely male-dominated administration of state affairs in Africa, minorities such as women suffer many abuses, under the guise of culture. Primitive practices such as child labor, child marriages, female genital mutilation (FGM), wife battering, and forcible initiations are still being practiced in some parts of Africa today. Despite domestic legislation prohibiting all forms of abuses, these practices still go on because they are regarded as part of culture, religion and tradition. Consequently, victims do not get any protection, effectively rendering domestic legislation impotent (Mbaku, 2018). The question that might be asked could be: is there a distinction between cultural decisions and state decisions in the context of cultural relativism, or are the decisions intimately connected?

In line with the UN Charter (United Nations, 1945), the state is the principal holder of rights and duties of a given territory. So, since the state is the presumed holder of such rights, then logically, state decisions ought to prevail over any form of cultural and religious authority. Majority of African states are signatories to several international treaties such as the Universal Declaration on Human Rights (United Nations, 1948), the United Nations Convention on the Elimination of all forms of Discrimination Against Women (United Nations CEDAW, 1979) and the Convention on the Rights of the Child (United Nations CRC, 1989). These instruments prohibit abuses and

discrimination on any ground, including religion, creed, ethnicity, cultural orientation, disability, race, gender, or societal status (United Nations, 1948). Other binding treaties include, the International Covenant on Civil and Political Rights (United Nations, 1966a), and the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966b). African states are also signatories to regional human rights instruments such as the African Charter on Human and People's Rights (African Charter, 1981), the African Charter on the Rights and Welfare of the Child (ACRWC, 1990) and the Maputo Protocol (2003) on the Rights of Women in Africa.

Ironically, majority of the African states have not made any reservations to these international and regional instruments. As such, they are obliged to ensure that all state authorities, including customary authorities entrusted with functions of the state, honor human rights and do their utmost to protect all persons under their jurisdiction (United Nations, 1948). Fundamentally, the belief system in Africa seems to dictate what individuals must do or not do. Superstition, myths, and a belief in ancestral powers have been the hallmarks of African cultural heritage (Machel, 2010). To give an example on feminism, there is widespread belief, based on myth rather than scientific evidence that women are better at parenthood, which gives men a "license" to focus on building their professional careers, and women a "license" to give it up. Women are judged much more by their looks rather than their brains, turning them into "ornaments" who are not taken seriously. Prinz (2012) observes that there is also a cultural belief that girls are naturally "girlish and boys naturally boyish". This is an example of omnipresent pressures on individuals to conform to "acceptable" cultural patterns that start well before birth and reinforced throughout life. These stereotypes are rife among both men and women, locking people into roles that they believe are expected of them, preventing them from pursuing their potential as individuals. Enloe (2007) opines that gender issues are not biologically produced but are socially constructed meanings that men and women assign to masculinity and femininity.

### 3. The African case

The subject of universal human rights is not just controversial between the West and Africa, but also remains contentious amongst the Africans themselves. Africans do not seem to project a coherent policy on human rights. Two eminent African scholars, Professor Chinua Achebe, and Professor Wole Soyinka seem to suggest that the universal regime itself is not necessarily the bone of contention. To them, the issue seems to be that many African regimes have continued to abuse human rights under the cover of culture hence the need for protection through universal laws (Achebe, 1998). This concern stems from the realization that Africa today has mainly departed from the ideals of the pre-independence pan-African agenda.

Indeed, the African case offers a mixed bag: whereas the pan-African movement of pre-independent Africa seemed committed to the preservation of traditional African values, dignity, pride and a strong belief in indigenous cultures; most post-colonial African leaders seem not to have lived up to these ideals. In fact, it can be argued that the fault lines began to show with the pan-Africanists themselves during their post-independence rule (Skurnik, 1965).

Earlier, the Negritude Black Consciousness movement of the African diasporas came to prominence in the second quarter of the twentieth century. The Negritude ideological movement was a brainchild of the African intellectuals mainly in Paris, France and was born out of the shared experience of discrimination, slavery, colonial assimilation, and oppression by Western powers against black people (Skurnik, 1965). The movement had an underlying influence of Marxist ideas which in the African context, was viewed positively as an effective counter to the colonial and imperialist agendas. The main aim of the Negritude movement was to seek an end to Western imperial rule whose sole interest in colonizing Africa was based on economic exploitation of the continent's raw materials (Ngugi wa Thiong'o, 1993). Early pioneers of this movement included Leopold Senghor, the first President of independent Senegal, and Kwame Nkrumah the first leader of independent Ghana who as diasporas, would later spearhead the pan-African movement on the African soil. However, unlike other black scholars and politicians, Senghor advocated for a form of

assimilation that would allow for cultural miscegenation of black and white people, i.e., a racial consciousness in which both black and white cultures could work toward a place of mutual enlightenment (Skurnik, 1965). Whereas many African scholars felt that each colony should aspire to get independence on their own, Nkrumah argued for a pan-African strategy; a union of African republics (the United States of Africa). Nkrumah's fears of African states, each operating as a single entity, were informed by the fact that newly independent African states were too weak economically and politically to withstand the neo-colonial pressures by the former colonizers (*ibid*).

The pan-African agenda was popular among early African leaders such as Haile Selassie of Ethiopia, Ben Bella of Algeria, Julius Nyerere of Tanzania, Sekou Toure of Guinea, Jomo Kenyatta of Kenya, Kenneth Kaunda of Zambia, Samora Machel of Mozambique, and Robert Mugabe of Zimbabwe among others. These leaders' left-leaning Marxist-Leninist-Maoist ideologies were consolidated during the protracted liberation struggles of their countries. In sum, it can be argued that Marxism and nationalism ideologies gave birth to the spread of nativism and Afro-radicalism on the continent (Ndlovu-Gatsheni, 2009). It is contended, however, that after the end of the armed independence struggles, Nkrumah and his "African disciples" desire for a "United States of Africa" became an obsession that may have blurred them from attending to their local population's economic growth needs. As national economies began to tumble, opposition to their rule quickly formed. Ironically, their governments responded by applying oppressive laws and showed an increased appetite to centralize power. Consequently, the population began to see them as dictators rather than as liberators—subsequently, the overthrow of Nkrumah, the toppling of Senghor, the deposition of Ben Bella, Haile Selassie, Mugabe, and the humiliating electoral defeat of Kaunda testifies to this. Also, the ease with which the population accepted their removal demonstrates the extent to which their legacies had been tattered. This dramatic fall from grace of the African political giants can be likened to a marathon lost in the last remaining quarter of a mile (Lawson, 2010).

Kenyan law professor Patrick Lumumba bemoans the impunity that still reigns in post-colonial Africa on accountability and human rights violations. It can be deduced from Lumumba's lamentations that these actions may be giving credence to the universalist argument that implementation of universal rights and the use of other international interventionist mechanisms may be the only way to ensure that citizens enjoy their fundamental human rights (*Zambian Observer*, 26 September 2021). Most African governments have failed to provide sound social security safety net schemes for their populations in the areas of economic development, political rights, health, education and judicial accountability; this is due to excessive clientelism in the way government bureaucracies are run. The artefacts of such bureaucracies include the mushrooming of corrupt elites who arm-twist state institutions, rendering them ineffective (Chabal, 2009). Further, Professor Lumumba opines that due to weak institutions, there is now an emerging pattern of African leaders manipulating national laws to allow themselves to stay in office beyond their constitutional term limits. These negative factors have not only eroded public trust in state institutions but have also significantly lowered the value of African citizenship (*Zambian Observer*, 26 September 2021).

The United Nations (UN) Refugee Agency Report of 2018 provide staggering revelations on the human security situation and state failure in Africa: from the year 2000 to date, tens of thousands of Africans mainly from Libya, Morocco, Mauritania, Mali, Guinea, Ivory Coast, Chad, Nigeria, Cameroon, Sudan and Somalia have been crossing the Mediterranean Sea to flee from corruption, abuse of human rights, lack of youth opportunities, poverty and war in their homelands in search of a better life in Europe. Dozens of others have died trying to cross the Mediterranean. The European authorities are so overwhelmed with the influx of immigrants that they have a challenge of drawing a line between economic refugees and asylum seekers (United Nations UNHCR Report, 2018). This refugee crisis has been exacerbated by a climate of lawlessness in some African territories that are controlled by violent non-state armed groups—themselves a product of

state institutional failure. Strong institutions work as a deterrent to traits of bad governance and hence fosters prosperity of the state (Cheeseman, 2018).

In the judiciary, the levels of compromise are so rife that the phrase, “why hire a lawyer when you can buy a judge”, is the defining mark of the majority of African legal fraternities. Judicial officers see no fault in being errand boys and girls of the powers that be—justice is only available to the highest bidder, in effect granting de facto immunity and impunity to the ruling class. Political observers have opined that it is naïve for human rights campaigners to expect jurisprudence from such compromised legal systems—indeed even ordinary citizens have no serious expectations from their legal institutions. This is a damning indictment on African governments and calls for serious introspection on human rights protection (Mutua, 2000).

To illustrate more elaborately on how African judicial confidence has been torn to shreds, a veteran constitutional lawyer in Zambia, John Sangwa recently decried that:

... today, going to Court in Zambia is like going to a casino because there is no consistency in Court decisions. In most cases, the outcome is a matter of chance. Court decisions are rarely informed by the law and facts governing the case but by variables such as the temperament of the judge, the eliteness of the parties to the proceedings, and whether the judge is receptive to bribes. The independence of the judiciary has become a fiction. The judiciary has been reduced from a formidable branch of government co-equal with the executive and the legislature, to a mere department within the executive branch. The judiciary has lamentably failed to check on the lawlessness often exhibited by the executive, and in certain instances, the judges themselves have legalised such lawlessness... (Lusaka Times, 3 October 2021).

Against this background of the absence of justice and political will, Nwankwo (1990) posits that fundamental questions need to be asked about the character of the African state itself. Governance issues in Africa have raised serious questions on the commitment of the political ruling class to uphold the rule of law, and on this score, most African leaders fall woefully short; and few people would dispute the assertion that the African leaders themselves have become the “new colonial masters” of their own people. It is in this light that liberals argue that a universalist call for accountability on human rights abuses through institutions such as the International Criminal Court (ICC) seems justified.

Liberals also argue that the world cannot be constrained by the dogma that nobody—under any circumstances—should intervene in the domestic affairs of other states. Freedom is not the default position of humankind; otherwise all people around the globe would be free. Freedom has a price. In a world where many regimes still suppress, persecute and slaughter their own people, the West is faced with a simple choice: either to intervene and protect the weak or to close its eyes and allow the oppressors to continue doing harm. This human rights debate has brought to bear an ethical dilemma for the West who apparently seems to be in a no-win situation: doing something about human rights abuses is seen as advocating a neo-colonial discourse; doing nothing leads to accusations of moral indifference (Bill & Philip, 2011).

For the African ruling class to save face for their violations of human rights, they often divert attention by resorting to tactics of the “blame game”: the standard African excuse is that of colonialism. While Western involvement in African affairs has its fair share of blame, the fact remains that the colonial sun set a long time ago. Africans need to wake up to reality that the colonial ship which they blame for their problems has since sailed (Mutua, 2000). However, Kenya’s foremost writer, Professor Ngugi wa Thiong’o argue in favor of the African position; that Western interference in the African political, economic, and cultural processes through colonial and neo-colonial dominance and oppression has stagnated Africa’s growth and destroyed local ingenuity. This situation, he argues, has left Africa in a dependency relationship that has tended to

perpetuate negative stereotypes leaving many Africans believing that their cultural values are inferior to those of the Europeans (Ngugi wa Thiong'o, 1993).

Critics on the left such as Ngugi wa Thiong'o (1993) further contend that liberal posturing and talk about "humanitarian intervention" is only a pretext for justifying Western domination of Africa and a cover for continued social and economic imperialism. One of the most striking practical examples of this critique can be illustrated by the rational comments made by the former United States (US) Secretary of Defense, Donald Rumsfeld: at a media briefing on 12 February 2002, journalists queried Rumsfeld on why his government was still intent on invading Iraq even when there was thin evidence on Baghdad's weapons of mass destruction programs. In justifying his government's war stance, Rumsfeld insinuated that the US would not relent on pursuing the matter because, "the absence of evidence is not evidence of absence" (Rumsfeld, 2011). Rumsfeld's comments are very instructive, and they hammer Karl Popper's point home: that empirical observation is theory dependent. Theory tells you what to look for and as such, people tend to see what they want to see (Moses & Knutsen, 2007). The US tendency that seems to view every problem in the world as requiring a military response, and therefore pausing threats of intervention in sovereign states has worked at cross-purposes to the stated Western foreign policy goal, i.e., the universalization of human rights. The negative legacy of the 2003 Anglo-American led war in Iraq and the subsequent North Atlantic Treaty Organization (NATO) assault on Libya in 2011 which led to the overthrow of the Gadhafi regime has only worked to strengthen the African argument that the push for universal rights is simply a furtherance of Western foreign policy in Africa (Kampfner, 2009).

Also, Africans have raised concerns about a universalist doctrine appearing to emerge as a form of cultural hegemony championing revisionist forms of religion and tradition; a prime example would be what seems to be the promotion of gay rights in Africa as homosexuality is seen to be foreign to the social norms of most developing countries (Barya, 2009).

#### 4. Conclusion

Africa today stands at the crossroads of debates on universal human rights and cultural variations. Given the continued stalemate on this subject, twenty-first-century global political narratives provide a watershed moment in the (re)construction of a functioning international justice system on human rights protection. The United Nations (UDHR) (1948), written in the aftermath of World War II was meant to provide a moral standard for judging the states' treatment of the individual. The failure of one of the key projects of universalization, i.e., globalization, to bring tangible benefits of economic liberalization in Africa has been a major setback to the realization of universal human rights. African citizens' orientation to universal rights are most fully appreciated with reference to both baskets of goods, i.e., political rights and material benefits.

For the African population, the main challenge seems to be the lack of quality education that has meant that many Africans are not fully aware of their fundamental rights even where domestic legislation provides for such rights. This stagnation of knowledge is due to weak investment in education by African governments. Improving literacy levels through the provision of affordable and quality education for all citizens is a matter of necessity and a vital component if states are to aspire to be free and democratic. Democracy is ordinarily underpinned by the vigilance of the population hence the emphasis on the need for a vigorous civic culture because an illiterate population is a "blind nation".

Cultural values might be important in a society but what are values and who said values cannot be challenged? Culture and religion in Africa have not sufficiently demonstrated the significance of the values that they vehemently propound. The utility of any cultural system lies in its ability to uplift the lives of its people. Societies that are full of superstitions, religious indoctrination, lack of proper education and nationalistic in outlook are usually ridden with poverty.

As such, emphasizing cultural values simply for their sake comes across as empty rhetoric. Furthermore, there is no sound theory in the study of political science that suggests that states should rely on religion to ensure human rights and justice. To the contrary, religions nurture discrimination through “holier than thou mentality” and the delusion of divine supernatural powers.

In this light, the poor record on human rights protection in Africa can best be mitigated by the application of universal human rights because at their minimalist, universal rights offer more cogent platforms that have the capacity to provide remedies for victims whenever human rights abuses occur. One of the most effective ways of getting round this challenge is to promote quality education for all and intensify civic education campaigns on the rights of citizens, particularly the minorities. Education ensures that the pathway to knowledge is not blocked by allowing entrance of all ideas and theories, and hence making it imperative to remain open to new facts and competing perspectives. Education also ensures that debates are more discerning.

In today's knowledge driven economies, access to quality education and the chances for development are two sides of the same coin. The human mind makes possible all development achievements from health advances and agricultural innovations to efficient public administration and private sector growth. For countries to reap these benefits fully, they need to invest in human capital to unleash the potential of the human mind—education unleashes this potential.

#### Acknowledgements

I extend my thanks to the Philosophical Faculty-Department of Political Science of the University of Hradec Kralove for academic support in my research studies.

#### Funding

This work did not receive any funding from any institution. However, my university (the University of Hradec Kralove) was willing to pay for the APC if applicable.

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#### Ethical approval

No ethical approvals are required for this paper.

#### Disclosure statement

No potential conflict of interest was reported by the author(s).

#### Citation information

Cite this article as: Universal human rights vs cultural & religious variations: an African perspective, Nsama Jonathan Simuziya, *Cogent Arts & Humanities* (2021), 8: 1988385.

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