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How has cultural relativism been applied by anthropologists in the study of law and the social contestation on human rights? In this essay the author explores the concept of cultural relativism as a method of cultural description

Cultural Relativism, Legal Anthropology and Human Rights

Andrew Price

I am human and nothing human is alien to me. Terence, 163 B.C.
My own group aside, everything human is alien to me. Renato Rosaldo

Cultural relativism claims that there is ethically, morally, and culturally no absolute truth, and that when observing another culture one must suspend all judgments because those judgments are inherently ethnocentric (Zechenter, 1997). Relativism flourished in the 1930s and 40s with noted anthropologists such as Boas, Benedict and Herskovitz. It was during this time that relativism set forth and combined two important principles: (1) skepticism of Western values and (2) tolerance for other cultural practices (Hatch, 1997). Not all anthropologists embraced this idea, in fact some major players in the field such as Ralph Linton, Robert Redfield, and A.L. Kroeber were quite critical of relativism, and to this day relativism is a theory to be "...more often attacked than embraced" (Hatch, 1997: 371). Hatch claims that relativism is flawed in its call for humans to be nonjudgmental in the face of human atrocities like genocide, torture, or female genital mutilation, but also believes that relativism should not be thrown out all together. Among anthropologists it can be said that, in some respects, most are relativists, and in other respects, non-relativists. It is difficult for an anthropologist to suspend

all moral judgment when observing another culture, but in many ways this is the ultimate goal of the observer, therefore it would be absurd not to embrace any form or aspect of relativism.

Relativism essentially has three different levels of theoretical thinking. The first level is Descriptive, or Weak Relativism. This is the most rudimentary of the three, which simply takes a face value observational approach under the premise that every culture is different. The second level is Normative Relativism or Strong Relativism, a claim that because cultures are different, standards are culturally bound and there is no way to set "transcultural" moral and ethical standards. Finally the third level is Epistemological Relativism or Extreme Relativism, which has been endorsed and exemplified by Geertz and his followers. Geertz believes that "Humans are shaped exclusively by their culture and therefore there exists no unifying cross-cultural human characteristics" (Zechenter, 1997: 323). Geertz's form of relativism states that because all cultures are mutually exclusive and therefore existent under independent cultural factors, there is no meaningful way of judging any cultural practice outside of our own. As an observer, Geertz would argue, any type of study of another culture, with the exception of sterile literate documentation of exact happenings, is

ethnocentric, inaccurate and therefore an ideologically tainted practice within the Social Sciences.

Cultural Relativism is not without its flaws. Kluckhohn believed that Cultural relativism is intellectually irresponsible. If one is to literally act upon the claims of ethical relativism then one must be so compelled as to accept any cultural happenings as legitimate and justified through the claim and sanctity of culture difference. For example, Kluckhohn in the case of Nazism argues under the theory of cultural relativism, the world must accept such ideals and actions because to not accept them and pass judgment is to be ethnocentric and ultimately worse than the Nazi rhetoric itself (Zechenter, 1997). Additionally, authors such as Allan Bloom have attacked the theory of cultural relativism. Cultural relativism, says Bloom, has created an abundance of Social Scientists and students who “are unable and/or unwilling to evaluate cultures” (Foster, 1991: 257). This type of thinking in the social sciences essentially offers no meaningful answers to questions that continue to plague the field, such as the concept and application of human rights to a culturally diverse global model. Cultural Relativism is not only flawed, but it assumes that culture is a static concept completely unaffected by change, growth, and technology. Cultural Relativism “...tends to justify the dysfunctional beliefs and customs of non-Western cultures while marginalizing nondominant voices within those societies” (Zechenter, 1997: 327-328).

Cultural Relativism as a Method

Glazer claims that Cultural Relativism "is a key methodological concept which

is universally accepted within the discipline" (1996) of anthropology. As a method in anthropology, Cultural Relativism presumes equality among cultures and a need for unbiased study to fully and more accurately understand cultural phenomena. The general idea is that cultural relativism provides the framework for neutral cultural studies in order to insure that cultures, as Glazer puts it, are to be judged on their own cultural merits (1996). Boas used cultural relativism as new methodological approach to studying cultures, and initiated the crossover from the comparative method, to the observational and merit based (anti-comparative if you will) method. According to Glazer, to justify his beliefs, Boas described four limitations to the comparative method, which are essentially corrected by the implementation of cultural relativism:

1. It is impossible to account for similarity in all the types of culture by claiming that they are so because of the unity of the human mind.
2. The existence like traits in different cultures is not as important as the comparative school claims.
3. Similar traits may have developed for very different purposes in differing cultures.
4. The view that cultural differences are of minor importance is baseless. (Glazer, 1996).

Under the relativist method a social scientist would study the traits of a culture in great detail while taking into account the culture as a whole and that cultural bleed off of traits into neighboring cultures (Glazer, 1996) must also be taken into account in order to grasp and appreciate culture as an isolated and independent phenomenon. It

was believed by Boas that this methodology would allow anthropologists "(1) to understand the environmental factors that shape a culture, (2) to explain the psychological factors that frame the culture, and (3) to explain the history of a local custom" (Glazer, 1996). Ultimately cultural relativism can be viewed as Boas' establishment of an inductive methodology for anthropology as well as the rest of the social sciences. In using an inductive form of methodology and discarding the comparative method, anthropologists would be able to better study cultures solely on the merits of the accumulated data, and not with a biased cross cultural comparison.

The Application of Cultural Relativism To Human Rights Issues

Perhaps the greatest, or most widespread, application of cultural relativism is in the area of human rights and the analysis of cross cultural belief systems. In the article *Human Rights, Human Difference: Anthropology's Contribution to an Emancipatory Cultural Politics*, Terence Turner discusses the concepts of fundamental human rights and the application of Cultural Relativism to these rights. Human Rights, Turner claims, is the idea that somehow as a person or peoples there exists an intrinsic and inherent right to certain privileges such as the right to not get tortured, the right to freedom, or even the right to equal opportunities. Exactly how or what enables a person to claim such concepts as being universal does present problems. "The ability to make such claims is often assumed to imply or presuppose the existence of some institutional means of enforcing them,

binding on the society that recognizes the rights in question (normally the state or mechanism such as the feud in stateless societies)" (Turner, 1997: 274-275).

Does there always exist an institution or mechanisms to enforce rights that someone claims to have? Is it legitimate for anyone to claim anything and have his or her views of rights legitimized under the sovereignty of Cultural relativism? Turner suggests that there may be difficulty in claiming that human rights are universal, especially when it is being applied to non-universal concepts which such as social institutions and States. Social institutions and states are unique happenings that occur in some cultures but not others. Is it possible to claim a universal "right" in a non-universal situation? Applying the Western ideal of rights gets sticky when attempting to apply them to non-western models because of Cultural Relativism stepping in and pulling the ethnocentrism card.

The origins of human rights are primarily a Western concept. It has been Western culture that has formulated and produced the idea that humanness is a possession of the individual in question, and that this possession of humanness entitles the individual to rights. Furthermore, when individuals come together, as in the case of a society or culture, the humanness of the collect somehow, in the western ideal, merits collective rights. Turner questions whether or not a universal principle of right is incompatible with Cultural Relativism. "For many anthropologists, of course, 'cultural relativism' is not a fully developed theoretical position but, rather, a commitment to suspending moral judgment until an attempt can be made to understand another culture's

beliefs and practices” (Turner, 1997: 275).

Cultural Relativism is nothing more than a universal claim that presumes that all cultures are one in the same. For this to be true it must be proven that all cultures possess the same qualities and beliefs towards social value of the individual, therefore giving inherent personal rights. In addition, scholars such as Messer discuss the topics of Cultural Relativism and Anti-Cultural Relativism and their applications to Universalism. Messer states that there are essentially two reasons that anthropologists have been opposed to Universalistic claims: (1) Universalist claims reject the concept of individual rights as being universally self-evident. In 1947 the American Anthropological Association (AAA) issued a statement of international human rights saying, “...standards and values are relative to the culture from which they derive” (293). (2) Rejection also comes from a belief that ‘individual rights’ are Western and therefore ethnocentric.

Some anthropologists also distrust the idea of international human rights because its implementation creates instruments of arbitration and a global morality, which can over-ride and supercede a cultural community and its values. Anti-cultural Relativists seem to put forth many of the same concerns as that of the Cultural Relativist. They both argue that modern human rights are distinctly different from all other cultural rights traditions because “specific cultural expressions of moral or social rights, however worthy and protective of human dignity, are not “human” rights. Under this assumption, those who follow the Anti-Relativist perspective also follow the U.N. human rights legal system as being a legitimate source for

arbitration and a global moral order, and a legitimate expression for the peace and security of individuals worldwide.

The case for universal human rights is rooted in historically western precedents. A drafting of these rights for the specific implementation of them upon humanity began in the late 1940s out of the aftermath of the Holocaust and proceedings of the Nuremberg trials. The roots for the appeal to universal human rights is also an extension of classic western thinking beginning with Greek philosophy, Roman law, Judeo-Christian tradition, Reformation humanism, and Enlightenment philosophy. This ideology further progresses with examination of historical documents such as the Magna Carta, the United States Declaration of rights, and the French Declaration of the Rights of Man and the Citizen (Messer, 1997).

It is worthy of noting that all such thinking and documentation was and is merely a self-serving testament to self-preservation typically put forth by those in power to further promote their own interests. Such Western thought is also notably the result of works done by white land-owning males, and can be construed as simply a means to preserve their heightened standards of living over the norm population of the time. While this remains a predominantly western fact, there has been other cultural philosophy’s disputing such types of cultural promotions of self-interests.

Asian philosophy has argued that the concept of political rights is non-existent and therefore foreign to the traditions of the Asian cultures. The focus of Asian culture has primarily been based on subsistence needs rather the civil liberties of its peoples. Western authorities, historically, have given precedence to civil and political rights

and by and large ignore the cultural socio-economic rights of any groups of people that are not Western. There is a tendency among these policy makers to disregard, if not completely throw-out the "...development or collective rights as derivative rights that compromise and gut the individual human rights concept" (Messer, 1997: 299).

There is a certain amount of agreement between the Cultural Relativist and the Anti-Relativist, they agree that there does exist, in cultures, the concept of right and wrong. Legal language has called for black and white areas in human difference and thus helps create a culturally global universal concept of rights and wrongs. The result is a "single universal formulation" (Messer, 1997: 312), which dictates and elaborates on what is acceptable universally as the definition of human rights.

Anthropology and the Law

Legal anthropology, once just a small sub-field of anthropology concerned primarily with the study non-Western legal systems, now encompasses the Western, industrial, and transnational legal matters. "Its scope includes transnational treaties, legal underpinnings of transnational commerce, the field of human rights, diasporas and migrants, refugees and prisoners and other situations not easily captured in the earlier community-grounded conception of anthropology" (Moore, 2001: 95).

Law, is often perceived to be culturally "tradition-driven", "however culture is simply a label denoting durable customs, ideas, values, habits, and practices" (Moore, 2001: 96). Law is not necessarily a culture, as some may note it to be, but rather a part of the package,

which makes the whole. Moore also claims that law can be viewed as a mask for elitist interests and that "law purports to be about furthering the general interest, but really serves the cause of the powerful, generally capitalists and capitalism" (2001: 96). Furthermore law is used as a tool for a rationalist framework within the profession. Moore cites law, particularly Western law, as a social concept of "problem-solving", and thus a tool to solve frequently occurring problems within a given culture (2001), and more recently, a problem solving too to deal with problems created by cross-cultural borders.

Law is power, and as Laura Nader clearly states throughout her work, to understand law is to understand how power works. To understand law and power, Nader has turned to non-Western cultures to explore what she refers to as the " 'Harmony of Law' model, which encapsulates coercive compromise and consensus as a form of behavior modification" (1997: 712). Among the Zapotec Indians, Nader has noticed, a similarity between their indigenous court system and "international negotiation settings" (1997). "I began to understand that the coercive power of legal ideologies had been missed by anthropologists caught up in a romantic notion of culture" (Nader, 1997: 712). Among the Zapotec, Nader has found the use of the harmony law model to be unique. Nader notes that the concept of harmony law was most likely introduced by the Spanish as a hegemonic tool, but that they "had began using it as a tool for restricting the encroachment of external, superordinate [sic] power" (1997: 213) thereby turning Harmony law into a counter-hegemonic tool used to ward against unwanted cross cultural influences. Nader's work represents

clearly how a culture can use law for a two fold purpose; the first being social regulation of community legal problems in an attempt to satisfy social harmony, and the second being a defense mechanism against outside influence and the unwanted reconstructing of the cultural accept values of legal community rights.

Law, Cultural Relativist Linked to Human Rights

In his article in the Journal of Foreign Affairs, Franck discusses, candidly, the effects, disobedience, and want of personal freedom from international regulation of laws and human rights doctrine through cross-cultural examples.

The Taliban, May 2000, who rule most of Afghanistan, order a mother of seven to be stoned to death in front of ecstatic men and children, in order to retribute for her crime of adultery. One-year prior, the House of Lords, provided refuge, for two Pakistani women who were accused of adultery, inside the UK. The reason: Had they stayed in Pakistan, they were surely to be at risk of public torture and possibly stoned to death in the home (Franck, 2001). In the face of all of this controversy of forbidding women to access public education, and leave the home unaccompanied, they (the Taliban) demand to be left alone in their religious beliefs and cultural standards just as the average American requests. “Leaders in Kabul insist that they not be judged by the norms of others – especially in the West” (Franck, 2001: 191).

The Taliban are not the only group who request the same treatment in the world arena, and reject such outside scrutiny. Franck points out that much the same request exist in the United States,

the same power house that frequently pulls “call for fairness” cards on others. “Florida, after frying several prisoners in a faulty electric chair, has only reluctantly turned to other methods of execution to conform to the U.S. Constitution’s prohibition of ‘cruel and unusual punishment’” (Franck, 2001: 191-192). He further points out that when many of our western allies claim that it is barbarous to have any executions, politicians ask them to mind their own business and respect the way they deal with citizens – just as the Taliban asks.

These arguments have stemmed from a common cause among many nations. The thriving of human rights, postwar, has created two elements, dynamic to the issue: globalization and individualization (Franck, 2001). Globalization has created common standards of protections for all peoples in what Franck (2001) refers to as a “decentralized” world, through monitoring human rights violations and requiring compliance from cultures not wanting to comply, but simply have their cultural differences respected. Jamaica is a significant case exemplifying cultures that wish to have their belief systems respected. After the Commission of Experts representing the ICCPR (International Covenant of Civil and Political Rights) chastised Jamaica for the administration of the death penalty (an act the US is continually in violation of with no reprimanding), “Jamaica responded by withdrawing from the ICCPR”(Franck, 2001: 1993). Jamaica’s response was consistent with many other countries, “respect our culture, our unique problems” (Franck, 2001: 193). In addition, most cultures, which come under scrutiny of the ICCPR, see this as an outright attack on there own legal and cultural identity.

While the Western authorities may view the Taliban's actions as militant, barbarous, and socially deplorable, the Taliban has a much different perspective. They see themselves as "guardians of a religion and culture that should be exempted from a "Western" system of human rights" (Franck, 2001: 195) and most of all exempt from having to abide by and succumb to international laws established by NATO (of which they are not a member). Again, as Franck has stated, this mimics the same views on international laws and regulations that the Western cultures have when they violate the ICCPR for the sake of cultural and social preservation of ways, rights and means.

Conclusion

Cultural Relativism, as a theory, method and application, possesses a great amount of responsibility to the field of Anthropology, as well as the greater Social Science system. With its theory based upon the assumption that cultures, and the individuals within those cultures, possess an inherent right to be sovereign from all judgment from any other culture system, this leaves very little room in the case for a universal human rights system. But the gaps and unanswered flaws of Relativism continue to plague arguments in favor of protecting a legitimate scenario of peoples and cultures being able to believe and practice as the wish without repercussions from a standardized global hierarchy. While many of the teachings by Anthropologists such as Boas and Geertz, have been both debunked and thrown out of most major Anthropological and Social Science thoughts and practices, Cultural Relativism's major premise of simply

observing a culture at face value still stands today as a standard practice of field data gathering. Perhaps the greatest contribution of Cultural Relativism, to the Social Sciences, and the world culture as a whole, is the establishment of cultural tolerance and a better attempt at non-ethnocentric cross-cultural observations.

Furthermore, the study of law in anthropology is unlike legal studies of any other field. While law may typically be seen a tradition-driven mechanism by cultures, scholars such as Moore and Nader have expressed that law is not its own separate culture, but a part of the grand sum of a greater culture, and that the particular culture determines the modifications of law, not the other way. The understandings of law, as Nader believes, can come only through an understanding of power and how that power works. Cultures use power as a two fold tool, the first being social regulation of community legal problems in an attempt to satisfy social harmony, and the second being a defense mechanism against outside influence and the unwanted reconstructing of the cultural accept values of legal community rights.

Finally, legal rights and human rights become sticky issues when they are applied cross culturally. With different beliefs systems it is hard enough for different cultures to see eye to eye, but the difficulty in understanding only increases when all cultures are required, by law and sanction, to operate under the same premise. It would seem that even the West, the primary developers of the ICCPR and human rights doctrine have a difficult time adhering to its own law and beliefs, ultimately reverting to the same justifications of the violations:

“respect our culture, our unique problems” (Franck, 2001: 193).

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