



## Human rights

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*Human rights, as described in documents such as the Universal Declaration of Human Rights, are a set of moral and legal principles that apply to all human beings irrespective of their age, sex, religion, nationality, and other such characteristics. Yet they can only ever be claimed and applied in specific historical and cultural circumstances. It is from recognising this basic paradox between a universal principle and its practical application that the anthropological study of human rights arises. It allows anthropologists to confront some of the fundamental questions in their discipline, while also contributing a distinct perspective to actual human rights controversies. How wedded is the discipline to cultural and moral relativism? What can be learned from those anthropological studies of justice and morality that were written before the current interest in human rights began in the 1980s? What form of human rights activism can anthropological knowledge foster, or is anthropological analysis a necessarily separate type of pursuit from activism?*

*This essay addresses these and other questions by considering anthropologists' varied responses to the Universal Declaration of Human Rights and their efforts to harness anthropological knowledge in the service of human rights advocacy. Critical perspectives on actually existing human rights administrations are also discussed. While some anthropologists identify problems in activists' and governments' efforts in order to make human rights more acceptable locally, others demonstrate the extent to which the emphasis by human rights activists on liberties rather than socio-economic rights has been compatible with the continuing influence of political and business elites, in particular postcolonial contexts. Anthropological work has also asserted its separation from the human rights agenda by exploring what other means ordinary people have at their disposal to make their claims and grievances heard. The essay concludes by considering the future of human rights in the light of the penetration of human rights law into ever more intimate spheres of life, such as sexuality and gender relations. Anthropology's particular strengths are also apparent here: kinship, the body, and personhood are classic themes that can provide unique perspectives on controversies over intimate human rights.*

### Introduction

For many of its practitioners, socio-cultural anthropology has come a long way since the period when cultural relativism seemed to undermine its contribution to understanding and advocating human rights. The 1999 Declaration on Anthropology and Human Rights by the American Anthropological Association (AAA), the largest professional association of anthropologists, made the case for a positive contribution in no uncertain terms.<sup>u</sup> It swore 'a commitment to human rights consistent with international principles', for which the Universal Declaration of Human Rights was said to provide 'the base line'. The specifically anthropological contribution was to insist on human diversity and to argue that 'human rights is not a static concept'. 'Our understanding of human rights', the AAA Declaration concluded, 'is constantly evolving as we come to know more about the human condition'.

It is this insistence on the provisional, historically contingent nature of the human condition that

distinguishes anthropology from many other academic and practical approaches to human rights. At the same time, particularly over the past three decades when the end of the Cold War has given the human rights agenda a new lease of life, anthropologists' personal commitments to that agenda have varied greatly. Some anthropologists have given less emphasis than others to the provisional nature of human rights, fully embracing the cause by serving as expert witnesses or advocates on behalf of the people they have studied (Sanford 2003; Speed 2006; Tate 2007). Other anthropologists, while not necessarily any less committed to social justice, have maintained a measure of scepticism about the extent to which human rights provide the most cogent framework for analysis as well as activism (Englund 2013; Jean-Klein & Riles 2005). These critical studies of human rights include further differences according to the ways in which scholars envisage the role of anthropology overall. While some are keen to locate progressive alternatives to the human rights agenda, others pose the question of what, if any, consequence is the topic of human rights to anthropological knowledge – what, in other words, does this topic contribute to anthropology rather than the other way around?

This essay starts by going back further in time than 1999 in order to take anthropology back to the future of human rights. The AAA issued its first statement on human rights in 1947 as a response to the invitation by the United Nations to comment on the possibility of an official declaration of universal human rights. This statement has subsequently (and only subsequently, as we will see) been much debated by anthropologists for its alleged cultural relativism, a position that the 1999 declaration was supposed to dislodge. Although cultural relativism has been seen as a particular trait of American cultural anthropology, as opposed to the comparative and even generalising thrust of much British and French social anthropology, the 1947 statement deserves renewed attention for its view on the historical and political conditions of universalist idealism. Some of its lessons bear revisiting as a framework within which to explore activism and critique as the two main prongs of anthropological work on human rights since the 1990s.

### **Anti anti-relativism**

The author of the 1947 statement was Melville Herskovits, a member of the AAA's executive board, who condensed his contribution into the following question: 'How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America?' (AAA 1947: 539). Subsequently, once human rights had made a comeback in the arena of international diplomacy and transnational advocacy, from the 1980s onwards, anthropologists also confronted their disciplinary biases that may have advised scepticism about the possibility of universal human rights. However, their silence on this question in the intervening years after the 1947 statement amounted to a rejection of that possibility and was characterised less by their embarrassment (Engle 2001) than their neglect of the topic itself (Goodale 2009b: 18-39). When the time

came for the AAA to formulate a new policy on human rights, the actual views taken by the 1947 statement received less attention than the fact that it had been written by one person only and published as an AAA statement without a vote having taken place among its membership.

The rejection of universalist idealism came to be seen as disengagement, an ill-advised act of withdrawal from a process that was steaming ahead, whether or not anthropologists wished to take part in it. Yet this reading of Herskovits's reflections misses the point he made about history. Far from assuming a static, unbridgeable difference in cultural terms between the West and the Rest, he emphasised a long history of contact and mutual influence, a history that had, more often than not, taken the form of occupation rather than accommodation. At issue was a 'process of demoralization begun by economic exploitation and the loss of political autonomy' (AAA 1947: 541). As a consequence, 'professions of love of democracy, of devotion to freedom have come with something less than conviction to those who are themselves denied the right to lead their lives as seems proper to them'. Herskovits acknowledged the 'noble' intent of earlier documents, now seen as precursors to the Universal Declaration, such as the American Bill of Rights, only to note their origin in the writings by men who were themselves slave owners. Here was Herskovits's challenge to the process of drafting a Universal Declaration of Human Rights: after a history of unequal exchange, it was a very tall order indeed to expect 'the Indonesian, the African, the Indian, the Chinese' (AAA 1947: 543) to become signatories to a document upholding the standards developed in the recently dominant part of the world.

The subsequent refusals to own the Universal Declaration, typically by the new political and military elites in Asia and Africa, made Herskovits's statement nothing short of prescient. Much trouble may have been averted had the authors of the Declaration attended to his concerns. Be that as it may, the lesson for anthropology is to recognise how such reflections on the historically contingent nature of so-called universal declarations do not necessarily amount to cultural and moral relativism (Dembour 2001; Goodale 2009b: 40-64). As an anthropologist associated with the teachings of Franz Boas, an advocate of 'cultural particularism' in American anthropology, Herskovits is too easily given the epithet 'relativist' (Simpson 1973). Would a relativist point out that cultural differences actually became a means of governing colonised people, so much so that 'the hard core of *similarities* between cultures [were] consistently overlooked' (AAA 1947: 540, original emphasis)? This acknowledgement that similarities across obvious differences carried subversive potential hardly warrants a reputation for relativism. Rather, the question posed by these early disciplinary reflections on human rights is what anthropology's sensibility to human diversity and historical contingency amounts to when it is *not* dismissed as cultural and moral relativism.

Clifford Geertz, while not addressing the topic of human rights as such, provided one answer to this question with his thesis about anti anti-relativism. It was 'an effort to counter a view rather than to defend the view it claims to be counter to' (Geertz 1984: 263). By defying 'the law of the double negative', Geertz proposed to reject anti-relativism without thereby committing himself to what it opposes, namely cultural

and moral relativism. Anti-relativists, especially when they trade in absolutes, are no more palatable interlocutors than relativists. Here is, in fact, one indication of the extent to which human rights can help to clarify anthropology's particular claims to knowledge. A debate between a relativist and an anti anti-relativist from the period when human rights were not at the forefront of anthropologists' thoughts can serve as an example. Staged within the sub-discipline of legal anthropology and revolving around the translation of concepts such as 'justice', it nevertheless seems highly pertinent to the issue of human rights.

The debate between Max Gluckman (1965, 1969) and Paul Bohannan (1957, 1969) continues to intrigue, because while working in different parts of the African continent, they both discovered that local idioms for 'debt' played an important role in the ways in which justice was pursued. At the same time, working in the same continent and sharing similar analytical interests did not guarantee consensus on the nature and purpose of anthropological knowledge (see Englund & Yarrow 2013). Gluckman could hope for greater precision about the meaning of debt through a comparative analysis involving material not only from his own Barotse study in present-day Zambia but also from other ethnographies of 'tribal law' as well as from studies of Roman and early English law. 'What is the difference between debt in these contexts', he asked, 'and the fact that any obligation establishes a state of indebtedness, in another sense of the word, while clearly obligation is basic to any system of law?' (1965: 245). The question was skewed neither towards particularity nor generality as such but sought to elicit specificity through a comparative exercise. By contrast, Gluckman felt frustrated with the cultural particularism of Bohannan's ethnography. Bohannan (1957) also emphasised the importance of debt to the idea of justice among the Tiv of Nigeria, but he insisted that the uniqueness of their system meant that it could not be examined in terms of the concepts of Western jurisprudence. The anthropologist could do no better than leave a number of vernacular idioms untranslated, so unique was the 'folk-system' ensconced within a particular culture (Bohannan 1957: 69). 'The insistence on uniqueness constantly obscures problems', Gluckman (1965: 255) complained in response, pointing out the many not-so-unique features of Tiv language on justice and debt.

It was the 'lack of perspective' in cultural relativism that troubled Gluckman (1965: 251), the inability to identify 'similarities within differences' (1965: 254) that would permit a more precise understanding of what was specific about the case in hand. To mark his intellectual debts, Gluckman dedicated his book to 'the jurists of Barotseland and of the Yale Law School', thus deviating from the established hierarchy between informants in the field and colleagues in academia (see Fabian 1983). A close ethnographic study of a particular judicial system was, in other words, more than the result of intensive fieldwork in Zambia. Gluckman understood universals to be specific in their historical scope and, therefore, the results of careful comparative work. In certain respects, his understanding prefigured anthropologists' interest in 'situated universals' in the twenty-first century, not least in the study of various activisms in the wake of human rights claims (see Tsing 2005). Whether, on the other hand, he prefigured anti anti-relativism in

Geertz's sense is a moot point. To the extent that Geertz came to be identified with cultural particularism in his interpretative approach to anthropological knowledge (Keesing 1987), Gluckman was perhaps more consistently an anti anti-relativist than Geertz himself was. When Edmund Leach (e.g. 1976) had developed an interest in structuralism as a matter of decoding the 'grammar' of cultures, Gluckman saw a troubling parallel to the division of humanity into so many mutually exclusive cultures in South Africa, the country of his birth. Memorably, he remarked that it was 'possible in the cloistered seclusion of King's College, Cambridge, to put the main emphasis on the obstinate differences: it was not possible for "liberal" South Africans confronted with the policy of segregation within a nation into which "the others" had been brought, and treated as different - and inferior' (1975: 29).

What the foregoing indicates is the rich disciplinary legacy which the anthropology of human rights can draw on. On the one hand, anthropology's alleged attraction to cultural relativism is not dispelled simply by swearing allegiance to the cause of universal human rights. At the same time, the comparative project, rendered impossible by the more extreme forms of cultural relativism, remains critical to any anthropological engagement with the possibility of human universals. Moreover, the substantial issues that sparked debate between Bohannan and Gluckman also serve to remind us that despite their silence on human rights, anthropologists had all along maintained a keen interest in the study of justice, obligation, and social order. In this regard, much could be gained by revisiting studies that addressed such issues before they were all subsumed under the compass of human rights (Englund 2008). An evolving notion of relational rights, from Henry Maine (1913 [1861]) to Bronislaw Malinowski (1926), is one example of intellectual resources obscured by a dogged insistence on the autonomous individual as the bearer of human rights. The location of rights in social relations, in the contentious practices of membership as well as obligation, suggests a perspective on situated universals rather than on an absolute universal which, with its roots in possessive individualism, may be little more than a principle adopted from one particular tradition.

### **Enter the activists**

These intellectual resources in the discipline largely fell by the wayside when anthropologists embraced the human rights agenda in earnest. They did so, as mentioned, from the 1980s onwards, if only in response to the shifting political languages in the world they shared with the subjects of their research. While criticising the status quo had until then often involved identification with some aspects of Marxism in the Western world, the human rights agenda lost its politically naïve associations among these critics in the post-Cold War era. Conor Gearty (2006), a legal scholar, has commented on the way left-leaning intellectuals shifted from seeing human rights law as a reactionary force to advocating its enforcement. He has pointed out how progressives might have lost their confidence to persuade voters to embrace social and economic reform and have, instead, come to see value in what he calls 'the attractions of a short-cut

via judicially enforceable social and economic rights' (2006: 80). Anthropologists would naturally emphasise the recursive effect of their fieldwork situations on their research and activism. Indeed, the skills and knowledge that the anthropologist was able to profess could become the basis of activism in their own right.

Victoria Sanford's work in Guatemala and Paul Farmer's work in Haiti are among the most prominent examples of anthropology as a kind of human rights activism. Sanford (2003) worked as a forensic anthropologist in Guatemala in the wake of its civil war. By documenting the exhumation of secret mass graves, she was able to participate in debates about genocide, truth and reconciliation, with a voice that combined anthropology with activism. Farmer's (2003) influential work, extending from Haiti to a powerful argument about global inequalities, concerned health as a human right. Here anthropology combined with medical practice to issue a challenge to the way in which human rights had come to be regarded in the post-Cold War world. Farmer saw the health effects of displacement caused by political and economic violence and drew upon a long-standing controversy within the human rights movement by asserting social and economic rights as human rights on a par with the so-called first generation rights of expression, assembly and worship. Just as the documenting and witnessing involved in Sanford's forensic anthropology enabled her to contribute to activist agendas, so too was it a short step from Farmer's engagement in medical practice to an engaged anthropology. In both cases, simply by practising anthropology, they were practising activists.

The engaged anthropology of human rights has taken other forms too, notably advocacy within the movement for indigenous rights (see e.g. Speed 2006; Turner 1997). But activists – and more broadly the bureaucracies that human rights advocacy has spawned – have also become subjects of ethnographic research in their own right. It is this development within the anthropology of human rights that has often veered more towards critique than activism, although significant differences of emphasis exist within this literature. Sally Engle Merry (2005) provided a valuable perspective into the local and transnational aspects of human rights activism around the issue of gender-based violence in five countries. Her key interest was to examine how certain recurrent institutional and legal provisions – such as training programs, domestic laws, shelters and counselling services for battered women – got translated, as global activists helped them to travel across the globe. Common to activists was the notion that poor communities did not generally understand the principles of human rights, but Merry's focus was on what might make advocacy succeed in historically and culturally diverse contexts. She proposed a perspective on 'vernacularization', in which activists' knowledge of, and respect for, local cultural codes was essential to any success in their transformative work. By focusing on a single country emerging from authoritarian rule, Harri Englund (2006), on the other hand, described a situation in which human rights activism became entangled in long-established habits of elitism, by which the Malawian 'grassroots' had often been seen to lack any positive moral or intellectual resources of their own. Among other examples, translation, not in

Merry's metaphorical sense but in the linguistic sense of rendering human rights accessible in Malawian languages, was a top-down process in which condescension displaced consultation. By emphasising civil and political liberties rather than social and economic rights, Malawian activists also entered an unlikely alliance with the political and business elites, including their foreign creditors. As a result, the very concept of human rights acquired negative connotations among the country's impoverished majority.

These studies begin to give some idea of the range of positions – from co-construction to denunciation – that anthropologists have taken towards human rights activism (see Jean-Klein & Riles 2005). On one hand, human rights activism in its many forms is prominent enough in the contemporary world to warrant a series of ethnographic studies, dedicated to investigating it from a comparative and analytical point of view. As with any ethnographic project, the researcher has to be mindful of how their own convictions may prejudice them in the research process. On the other hand, it is also necessary to ask whether the anthropology of human rights, beyond its varied involvement with activism, can enrich the discipline as a whole. One way of addressing this dilemma is to suggest that anthropologists also attend to the question of what can constitute a productive subject for the anthropology of human rights, apart from transnational activism and outright human rights violations. We can discover a set of neglected topics in anthropology overall, such as when the apparent liberal roots of the human rights agenda compel the anthropologist to examine the diverse ways in which such grand ideas as freedom (Englund 2006) and equality (Englund 2011) have actually been deployed and experienced in particular ethnographic settings. The anthropology of human rights may thereby begin to appear much less as another sub-discipline and more like a continuing conversation about anthropology's core concepts, including, as mentioned, justice, debt, obligation, and so on.

### **Intimate human rights**

While welcoming an expansive view on what human rights are, and what subjects they suggest for anthropological research, it is easy to forget that their origin, as far as the Universal Declaration is concerned, lies in an effort to prevent states from inflicting again on human beings any of the horrors of the Second World War. Human rights law, as opposed to the more diffuse human rights talk, continues to be at the core of many activists' and scholars' understanding of human rights. Among anthropologists, Richard Wilson has taken the view that the proliferation of disputes expressed in terms of human rights has been facilitated by the ignorance (or at least neglect) of the legal character of human rights. With some despair, he has noted how 'human rights have gone from a general list of what governments should not do to their citizens in the 1940s to a full blown moral-theological-political vision of the good life' (2007: 349). The issues covered can be as diverse as the treatment of prisoners in US military jails, access to anti-retroviral drugs to treat HIV/AIDS, and instruction in one's mother tongue in schools. 'New rights are added all the time', Wilson has remarked, 'thus expanding the rights framework into areas for which it was



not originally designed or intended' (2007: 350).

Such expansion cannot be attributed only to the near-hegemonic hold of human rights talk in many contemporary settings. Human rights law itself appears to permeate ever more intimate spheres of life. Sexual orientations, disabilities, children, gender relations, and old age are all domains that lawyers and activists are increasingly determined to bring within the reach of human rights legislation. The prospects for anthropological engagement are again bright. Just as indigenous rights, for example, may seem particularly congenial to anthropological comments, so too do many of the intimate human rights evoke fields of relationships long studied by anthropologists. One striking instance is the way in which kinship may become relegated to tradition in human rights campaigns. When a court in Papua New Guinea declared that using a young woman in a compensation payment between quarrelling clans contradicted the modern national constitution, it put all obligations entailed by having kin on the side of tradition (Strathern 2004: 208). Lost from view were the many competing values and practices that compelled people to meet their obligations. By lumping them all together as unconstitutional 'bad custom', the human rights-inspired court also asserted a divide between tradition and modernity, as though the two belonged to different historical epochs.

Likewise in Tanzania, feminist and non-governmental human rights organizations have condemned and even criminalised Maasai for one specific cultural practice – female genital modification (Hodgson 2011). Their zeal contrasts with rural Maasai women's broader set of priorities in their quest for survival in an increasingly hostile world. Over the past century, government policies targeting men as political leaders, household heads and livestock owners have eroded women's moral authority and spiritual significance. At the same time as men have found pastoralism economically less viable than before, they have left in increasing numbers to work in mines and towns, leaving women responsible for feeding and caring for their children and animals. For activists to enter the scene at this point, with their focus on one very intimate practice, is to turn a deaf ear to what Maasai women might really be saying about the circumstances in which they try to survive. Their desire to access quality education and health services may not receive enough attention when they are seen as the traditionalist and ignorant perpetrators of a harmful cultural practice.

What makes intimate human rights an issue of particular interest to anthropologists is not only the tendency to insert concepts of culture and tradition into these campaigns. Apart from providing opportunities to draw upon the rich legacies of anthropological work on kinship, the body and personhood, these campaigns call for further nuance in the study of human rights activism. Much as activists and lawyers may present themselves as fighting entirely modern causes, their preferred methods and meanings in making claims are likely to have been preceded by, and to co-exist with, other ways to frame and make claims. In India, for example, legal activists' efforts to promote women's reproductive rights – in their ability to determine their fertility, body, and childbearing – use different modes of speech depending on



who is being addressed (Heitmeyer & Unnithan 2015). While universal reproductive rights may be the language to use in claims aimed at the state, familial and religious contexts demand other strategies to make the claims audible. The comparative questions here include how this plurality of claims-making fares in countries where civic activism has weaker roots than in India and where, as in Malawi and Tanzania, campaigners may regard the communities on whose behalf they supposedly work with thinly veiled condescension. It is incumbent on the anthropologists in such situations to follow the ethnographic imagination where it leads him or her, possibly even entirely away from the worlds of transnational human rights activism to popular media such as the radio (Englund 2011).

This final point bears some elaboration by way of a conclusion. For it is not just the human rights violators, victims, and activists that are the subjects of the anthropology of human rights. If the human rights concept is forever evolving, as the AAA's statement suggested, then what lies outside of it now may well have something to contribute to its development in the future. The outside of the human rights concept may be located, as suggested, in earlier anthropological works on justice and morality. Or it may emerge ethnographically in fieldwork that is suitably open-minded about what constitutes its subjects. Either way, whether the human rights concept can absorb that which lies outside of it is perhaps less important than what humanity will learn about itself.

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[1] This declaration, and the 1947 statement discussed below, have also been published in Goodale (2009a).