

Human Rights: Both Universal and Relative (A Reply to Michael Goodhart)

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ABSTRACT

Academics generally endorse the Hollywood maxim that there is no such thing as bad publicity. We are particularly pleased when critical discussion of our work is fair, thoughtful, and intelligent. I am thus very happy indeed with Michael Goodhart's commentary on my article. Almost every point that he raises merits serious consideration. I appreciate the opportunity to continue the conversation here.

1. UNIVERSAL AND RELATIVE

Goodhart argues that "human rights are neither relative nor universal in the familiar senses of those terms."¹ I claim that they are both.² We should begin, then, with these senses of the terms.

The first definition of "universal" in the *Oxford English Dictionary (OED)* is: "Extending over, comprehending, or including the whole of something." Universal, in this sense, is "relative" to a particular class or group. For example, universal health care, universal primary education, and universal suffrage, as those terms are ordinarily used, involve making health care, primary education, and voting rights available to all citizens, nationals, or residents of a state.

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1. Michael Goodhart, *Neither Relative nor Universal: A Response to Donnelly*, 30 *HUM. RTS. Q.* 183 (2008), hereinafter referred to as "MG."
2. Jack Donnelly, *The Relative Universality of Human Rights*, 29 *HUM. RTS. Q.* 281 (2007), hereinafter referred to as "JD."

“Universal” also is defined as: “Of or pertaining to the universe in general or all things in it; existing or occurring everywhere or in all things.”³ What I call ontological universality, the idea that human rights are part of the natural fabric of the moral world, involves universality in this sense. A central purpose of my article was to show that human rights, although not universal in this “occurring everywhere” sense, are in a number of important ways universal in the “across a class” sense.

The parallel *OED* definitions of “relative” are: “Arising from, depending on, or determined by, relation to something else or to each other” and “constituted, or existing, only by relation to something else; not absolute or independent.” For example, human rights are culturally relative to the extent that they arise from, are determined by, or are in some other sense, depend on culture.

2. UNIVERSALITY AND LEGITIMACY

Goodhart argues that two assumptions “structure the wider debate over universalism and relativism,”⁴ namely, that if human rights are not universal then their theoretical justification is undermined, often with negative practical consequences. “[W]hat hangs in the balance is apparently nothing less than the legitimacy of human rights”⁵ and this “matters on the ground.”⁶ If I accept these assumptions, it is only in very limited terms.

There are many grounds other than universality on which human rights may be and have been justified and advocated. There are also multiple kinds of universality. Thus it would be misleading, at best, to suggest that “universality” is the key to the legitimacy of human rights. And I strongly reject the claim that “the legitimacy of human rights [is] a function of their universality”⁷—a claim that gets the relationship between legitimacy and universality backwards.

Human rights are not legitimate because they are universal. The legitimacy of human rights, insofar as it is connected with universality, arises from the source of the particular form(s) of universality. For example, human rights have what I call international legal universality because they have been accepted by states as binding in international law. They are not binding (legitimate) in international law because they are universal.

3. Oxford English Dictionary. *The American Heritage Dictionary* has almost identical definitions, although this, which is third in the *Oxford*, is first in the *American Heritage*, and the first *Oxford* definition is second in the *American Heritage*.

4. MG at 184.

5. MG at 185.

6. *Id.*

7. MG at 192.

In addition, a central element of my argument was that certain forms of “relativity” and “contingency” are essential to the justifiability and efficacy of human rights. Conversely, some claims of universality are theoretically unjustifiable or practically pernicious. Neither universality nor relativity *per se* is “good” or “bad” for human rights.

I thus disagree with Goodhart’s claim that “[t]he point is to restrict the claims of human rights universalism to make them more defensible.”⁸ The point, it seems to me, is to give empirically accurate and theoretically defensible accounts of how human rights are universal and how they are relative. Rather than defending universalism,⁹ I am trying to defend human rights (through appeals to certain types of universalist arguments and certain types of relativist arguments). Rather than “softening universalist claims”¹⁰ my aim was to clarify those types of universalist *and* relativist claims that are and are not theoretically defensible and practically desirable.

3. CONCEPTUAL AND SUBSTANTIVE UNIVERSALITY

I distinguish between conceptual universality, which is a feature of the very idea of human rights, and substantive universality, “the universality of a particular conception or list of human rights,”¹¹ particularly the list in the Universal Declaration of Human Rights. Goodhart is especially critical of my account of substantive universality.¹²

“Donnelly treats ‘substantive universality’ as a single question that admits of a single (if nuanced) answer: human rights are *relatively universal*.”¹³ This

8. MG at 185.

9. I worry when Goodhart writes of my “defense of human rights universality.” MG at 190. I do not defend “universality” *without adjectives*. And I “defend” particular forms of universality only because internationally recognized human rights today are in fact universal in these senses. For the same reason, though, I “defend” (certain kinds of) relativity.

10. *Id.*

11. JD at 282.

12. Goodhart also objects to my conceptual claim that human rights are held by all humans. MG at 186., noting that “this feature is not common to all accounts of human rights.” But I was trying to describe not the full range of philosophical accounts but the ordinary sense of the term. The first four definitions of “human” as an adjective in the *OED* are: “Of, belonging to, or characteristic of mankind;” “Of the nature of humans;” “Belonging or relative to human beings;” “Having or showing the qualities or attributes proper to or distinctive of humans.” And *The American Heritage Dictionary* defines “human rights” as “The basic rights and freedoms to which all humans are entitled.” In other words, my account is completely standard. (Even Goodhart draws attention to the fact that human rights are “available to anyone” (MG at 191, 193)—which I at least take to mean that he in fact agrees that everyone (all humans) have them.) And rights held by all humans clearly are universal in the sense of extending over an entire class.

13. MG at 186.

indeed runs counter to the stated purpose and general thrust of my argument. But I said no such thing—Goodhart provides no citation—nor did I mean to imply it. “Human rights are relatively universal” was intended merely to summarize the complex series of claims that human rights, depending on the particular senses, both are and are not universal and are and are not relative.

Goodhart appears to take this verbal shorthand as a “cumulative judgment.”¹⁴ The answers to ten different questions, however, need not be—and in this case definitely were not intended to be—separate parts of a single answer to a single question. My article began: “This essay explores several different senses of ‘universal’ human rights. I also consider, somewhat more briefly, several senses in which it might be held that human rights are ‘relative.’”¹⁵ I thought this made it sufficiently clear that I was interested in multiple answers to a number of different questions about human rights—which I then proceeded to answer seriatim.

Reflecting on Goodhart’s comment, however, I realize that presenting universality and relativity as a spectrum or continuum¹⁶ might misleadingly suggest a fundamentally quantitative distinction between (exactly) two different senses—and thus, possibly, a single question with a single answer. I also find unfortunate my reference to relative universality as “a form of universalism.”¹⁷ I thus appreciate the stimulus Goodhart’s comments have provided to clarify this important point. A much better representation of what I was trying to depict is a multidimensional discursive space.

4. CONTINGENT AND RELATIVE UNIVERSALITY

What I call functional universality is the claim that human rights perform certain functions (which I specify as protecting us against certain standard threats to human dignity posed by modern markets and modern states) in most places in the contemporary world (which have been more or less thoroughly penetrated by markets and states). Goodhart suggests that using the language of universality for such features of human rights is “more likely to confuse . . . than to clarify.”¹⁸

Goodhart objects particularly to my description of functional universality as “contingent” and “for us.” He also objects to my description of “international legal universality”—“the widespread active endorsement of

14. *Id.*

15. JD at 281.

16. JD at 292.

17. JD at 282 (emphasis added).

18. MG at 187.

internationally recognized human rights" as reflected in the contemporary body of international human rights law¹⁹—as "contingent and relative."²⁰ Therefore, let me explain what I mean.

In the case of international legal universality, "relative" identifies the fact that it holds (only) across a particular universe, namely, states. International legal universality is further "relative" to a particular time. "Contingent" indicates that this universality was produced by mechanisms that in the past did not and in the future might not produce such widespread endorsement. On further reflection, I think that I should also add that this universality is "incomplete," in the sense that a number of states continue to resist, more or less strenuously, hegemonic international human rights norms.

International legal universality, although incomplete, contingent, and relative, is nonetheless theoretically and practically significant. Sovereign territorial states, the designated class, remain by far the most important actors in determining whether people enjoy the human rights that they have. The fact that nearly all states have human rights obligations in international law thus is of immense importance. Local activists, transnational advocates, and foreign states can appeal to widely endorsed international norms that in almost all cases the target state has itself repeatedly accepted as binding. The language of relative and contingent universality seems to me to capture nicely many of the nuances of the situation.

Now let us return to my account of functional universality.

The spread of modern markets and states has globalized the same threats to human dignity initially experienced in Europe. Human rights represent the most effective response yet devised to a wide range of standard threats to human dignity that market economies and bureaucratic states have made nearly universal across the globe. Human rights today remain the only proven effective means to assure human dignity in societies dominated by markets and states. Although historically contingent and relative, this functional universality fully merits the label universal—for us, today.²¹

I see nothing confusing here—so long as we understand universality in the "across a class" sense. If one took universal to mean applying everywhere or for all time, this might indeed appear to be confused. But the obvious reference to historical contingency and the explicit identification of a particular "universe" of application (us, today) seem to me more than adequate warning against improperly imputing this sense.

19. JD at 288.

20. MG at 187.

21. JD at 287–288.

5. ANTHROPOLOGICAL AND ONTOLOGICAL UNIVERSALITY

Goodhart next considers my account of anthropological (or historical, or cultural) universality, the claim that most societies throughout history, or at least a large number of pre-modern (Western and non-Western) societies or cultures, have had well-established ideas or practices of human rights.²² Goodhart agrees with me that such claims are empirically incorrect.²³ He suggests, though, that on analogy to my arguments about functional and international legal universality, we could—and if I were to be consistent I should—consider this to be “universal but contingent and relative.”²⁴ The analogy, however, actually shows the opposite.

For functional and international legal universality, I specified a particular universe and then argued that in fact nearly all within that universe have the relevant property. Almost all states accept the rights of the Universal Declaration as binding in international law. Almost all people today face the standard threats to human dignity posed by markets and states that internationally recognized human rights were designed to remedy.

The relevant “universe” for arguments of anthropological universality is all, most, or some large or significant group of societies, civilizations, or cultures. The crucial empirical claim is that at least most of those within the specified set had indigenous ideas or practices of human rights. If this is true, then we can appropriately speak of anthropological universality. If not, we cannot. Goodhart, however, agrees that the empirical claim is false. Therefore, human rights are *not* (contingently and relatively) anthropologically universal.²⁵

Goodhart is correct that considerable cross-cultural consensus has *recently* emerged. This indeed is appropriately seen as a type of relative and contingent universality.²⁶ But advocates of anthropological universality explicitly refer to pre-modern or pre-colonial societies, which were the focus of my discussion. I capture the contemporary consensus instead in the notion of overlapping consensus universality (which I suspect is driven in large measure by functional universality and supported by international legal universality).

22. *JD.* at 284–85 n. 3–13 cites several examples of such arguments.

23. *MG* at 188.

24. *Id.*

25. *If* human rights were anthropologically universal, that universality would be contingent and relative (and incomplete). This is quite irrelevant, though, to whether human rights are anthropologically universal.

26. *MG* at 188.

6. CLARIFYING OR ABANDONING THE LANGUAGE OF UNIVERSALITY?

If human rights were “neither relative nor universal”²⁷ then abandoning the language of universality (and relativity) would indeed be called for. I have shown, though, that internationally recognized human rights are both universal and relative in standard senses of those terms. Therefore, let me slightly reformulate Goodhart’s suggestion: it would be “better”—theoretically more accurate or practically more efficacious—to replace talk of universality (and relativity) with something else.

I leave it to readers to determine whether my discussions of contingent and relative universality are “clumsy” and “confusing.”²⁸ I am afraid, though, that Goodhart’s proposed alternatives, when they are not themselves clumsy and confusing, are neither unusually clear nor particularly penetrating.

“Instead of conceptual universality we should discuss the inclusiveness of an account of human rights and the uniformity of the rights it prescribes.”²⁹ I honestly am not even certain what this is supposed to mean. “The rights it prescribes” suggests reference to a list of rights. But I explicitly defined rights as a matter of substantive, not conceptual, universality. And not only do I not know what Goodhart means by the “uniformity” of the prescribed rights, I cannot figure out why we should focus on them “having the same form or character” (*OED*). As for “the inclusiveness of an account of human rights,” inclusive of what? And, again, how does this relate to what I have called conceptual universality? Whatever Goodhart is trying to suggest, it is no clearer than my claim that all human beings have human rights.³⁰

“Instead of legal international universality we should discuss the variability of recognition.”³¹ Perhaps. But this is on its face no clearer. And my aim, rather than to discuss the variability of recognition, was to identify and defend the substantive claim that international legal universality is a contemporary reality. For *this* purpose, the language of relative universality is clearer and more precise.

His other suggestions—that instead of functional universality we talk about “the generality of the threats to which human rights respond,”³² that “[o]verlapping consensus universality really refers to the extent of concurrence on a particular concept of human rights,”³³ and that we replace ontological universality with talk of the truth or “metaphysical status of human

27. MG at 189.

28. *Id.*

29. *Id.*

30. See *supra* note 12.

31. MG at 189.

32. *Id.*

33. *Id.*

rights"³⁴—seem to me to offer no gains in clarity. Indeed, some precision may be lost. And I reject the suggestion that there “really”³⁵ is one best way to talk about these issues—especially when it diverges from ordinary usage.

7. ORDINARY LANGUAGE VERSUS LINGUISTIC LEGISLATION

We *could*, as Goodhart suggests, address most of the issues in my article “without invoking the terms relative and universal.”³⁶ It is striking, however, and I think important, that few people actually do. If it proves impossible to clarify the nature of the claims of universality and relativity that are a regular part of discussions of internationally recognized human rights, then maybe a new language is called for. But until then . . .

We ought to have a very compelling reason to reject ordinary language. Even if we have such a reason, unless we can present a clear and powerful explanation of what is to be gained by changing our terms of reference, even specialists are unlikely to adopt the new language. And even if specialists do, it is likely to be a long time before these new terms penetrate, let alone transform, popular and policy discussions—which in the case of human rights are of great importance.

The search for alternative formulations thus is at best a supplement to, rather than a replacement for, greater clarity, precision, and sophistication in our understanding of the universality and relativity of human rights. And in part because of previous efforts at conceptual clarification, debates today are more sophisticated and penetrating than in the 1970s and 1980s. My article attempted to further this trend.

8. ONE OR MANY DEBATE

Goodhart claims that “the question of human rights universality typically arises in connection with debates about cultural relativism.”³⁷ This fact about how universality has been discussed tells us little about the contours of the concepts of universality or relativity, the other issues that also have been or may be involved in these discussions, or where future discussions may or should go. Like a number of other scholars operating within a variety of

34. *Id.*

35. Elsewhere as well (MG at 185, 186) Goodhart claims, with no argument or ontological warrant, that something I am talking about “really” is something else.

36. MG at 189.

37. *Id.*

theoretical and political perspectives,³⁸ I have tried to move the discussion away from the (narrow and usually misleading) binary choice of universalism (understood as a single thing) or relativism (understood as a single thing). And I hope that my article has shown that there are many good reasons other than claims of cultural relativism to consider the universality of human rights—and many interesting and significant claims of relativism that are not cultural.

More generally, I am concerned by Goodhart's tendency to seek frames for a complex and multidimensional reality. Consider his claim that human rights "are legitimate because of their global appeal. That is enough."³⁹

It is not. There is nothing logically compelling about the idea of global appeal. Although perhaps an attractive ground for radical democrats, most people would find it problematic to reduce legitimacy to popularity. Why should the endorsement of others elsewhere make human rights legitimate for me? In any case, there are *many* other grounds—for example, natural law, divine commandment, moral duty, social contract, or the generally utilitarian consequences of accepting such behavioral rules—on which people accept or feel obliged by human rights. And to the extent that global appeal and legitimacy are related, Goodhart gets the relationship backwards. Global appeal is a consequence, not a cause or ground, of the legitimacy of human rights.⁴⁰

Consider also Goodhart's talk about "the case for" human rights,⁴¹ in the singular, and "the answer to the 'universality' question."⁴² There are in fact many universality questions, many with multiple answers. And, as I have argued,⁴³ there are multiple cases for human rights. The legitimacy of human rights arises not from any single source but from the intersection

38. See, e.g., Andrew J. Nathan, *Universalism: A Particularistic Account*, in *NEGOTIATING CULTURE AND HUMAN RIGHTS* (Lynda Bell, Andrew J. Nathan & Ilan Peleg eds., 2001); Ann-Belinda S. Preis, *Human Rights as Cultural Practice: An Anthropological Critique*, 18 *HUM. RTS. Q.* (1996); Bhikhu Parekh, *Non-ethnocentric Universalism*, in *HUMAN RIGHTS IN GLOBAL POLITICS* (Tim Dunne & Nicholas J. Wheeler eds., 1999); Eva Brems, *Reconciling Universality and Diversity in International Human Rights Law*, in *HUMAN RIGHTS WITH MODESTY: THE PROBLEM OF UNIVERSALISM* (András Sajó ed., 2004); Fred Halliday, *Relativism and Universalism in Human Rights: The Case of the Islamic Middle East*, 43 *POL. STUD.* 152 (1995); David R. Penna & Patricia J. Campbell, *Human Rights and Culture: Beyond Universality and Relativism*, 19 *THIRD WORLD Q.* 7 (1998).

39. MG at 193.

40. My article could be read as implying that the sources of functional, overlapping consensus, and international legal universality go a long way towards explaining the contemporary appeal of internationally recognized human rights.

41. MG at 185, 190.

42. MG at 185. Goodhart also repeatedly speaks of the legitimacy of human rights, in the singular. See, e.g., MG at 189, 190, 191, 192, 193.

43. JD at 289–91; JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 18–21, 40–43, 51–53 (2d ed. 2003).

several different, sometimes contradictory, grounds and justifications. The fact that a variety of perspectives converge⁴⁴ on the idea of human rights is not evidence that they all more or less closely approximate, or add up to, a single legitimating idea. Although the life of human rights advocates might be easier if there were a single “universally” persuasive foundation, legitimating arguments work within—are relative to—particular moral, legal, political, religious, social, and cultural communities.

9. CONCLUSION

We can accurately understand the roles of arguments of universality and relativity in justifying and advocating human rights only if we reject a unitary notion of “the” legitimacy of human rights, a binary opposition between universality and relativity, and the claims that universality necessarily “strengthens” human rights and that relativity necessarily “weakens” them. Rather than abandon the language of universality—the frequency of its use suggests that it points to important dimensions of the idea and practice of human rights—we need to identify and critically evaluate a wide range of claims of universality and or relativity.

Human rights *can* properly be called universal in a central ordinary sense of that term. They *can* properly be called relative in a standard sense of that term. These claims are closely inter-related. And both the universality and the relativity of human rights, properly specified, are important to the normative appeal and the practical efficacy of internationally recognized human rights.

Human rights are (relatively) universal—have something of a global appeal⁴⁵—in the contemporary world in at least three important senses. They are almost universally endorsed by states. They are increasingly seen to be a political expression of a growing number of comprehensive moral and religious doctrines. And both of these forms of universality reflect the fact that human rights are widely held to be the best means yet devised to respond to the standard threats to human dignity posed by modern markets and modern states.

44. Goodhart claims that overlapping consensus and convergence are very different things. MG at 187 n.19. “Converge,” however, in the first two definitions in the *OED*, means “To tend to one point from different places; to tend to meet in a point; to approach nearer together,” and “To tend to meet in a common result or point of operation.” To tend to one point from different places and to tend to meet in a common result is exactly what occurs in an overlapping consensus.

45. I might not object were Goodhart to unpack the idea of global appeal, identifying different grounds of appeal to different groups, in a way analogous to my separation of various forms of universality and relativity. My problem is with his undifferentiated appeal to a single factor that ostensibly is enough alone.

Each of these forms of universality is deeply relative: to states, to the comprehensive doctrines that participate in the overlapping consensus, and to a world of markets and states. Each is also contingent on particular historical circumstances. The undeniable relativity of human rights, however, does not mean that they are *only* relative—let alone relative only to culture—or that they are not in important senses universal. My goal, in both the article and this reply, has been to capture the complexity of the relativity and universality of human rights, which I have tried to summarize in the idea that human rights are relatively universal.