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Cosmopolitanism, Sovereignty and Human Rights – In Defense of Critical Universalism

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What is a reasonable understanding of the relationship between human rights protection, on the one hand, and respect for people’s sovereignty, on the other? In order to address this question this article utilizes the distinction between political cosmopolitanism on the one side, and moral cosmopolitanism on the other. Political cosmopolitanism implies that some form of global citizenship is needed for universal protection of human rights. Critics of this position stress the importance of self-governance and state sovereignty. In this article, it is claimed that rejection of political cosmopolitanism can be combined with embracement of moral cosmopolitanism, i.e. embracement a global moral community where respect for human dignity and therefore recognition of human rights of each individual is not limited by national citizenship and borders.

In this article, I defend a non-violent form of moral cosmopolitanism. Such a cosmopolitanism demands a modification of universalism of human rights. I distinguish between descriptive and epistemological universalism on the one hand and pure normative universalism on the other. Descriptive and epistemological universalism, I demonstrate, are aggressive forms of universalism that tend to legitimize domination. Critical universalism, which is a form of pure normative universalism, is justified in that it inspires political liberation within different traditions without legitimizing cultural monopolism and violence of the Global North.

Keywords: cosmopolitanism, normative universalism, critical universalism, human rights and sovereignty

The aim of this paper is to make a contribution to the discussion of the relationship between the protection of human rights, on the one hand, and respect for national sovereignty, on the other. The most important presumption in the analysis is the recognition of injustices in the global order of today. These injustices are

material and structural, but they also include important normative components, such as the tendency of the Global North to monopolize interpretations of human rights and democracy. There are a sufficient number of global voices that doubt or even reject “universal solutions” offered by the strong global players. It is rightly claimed that values such as human rights, democracy, and modernization are used as instruments of domination rather than liberation¹.

This paper enters the discussion on human rights and sovereignty by utilizing the distinction between political cosmopolitanism and moral cosmopolitanism. Proponents of political cosmopolitanism argue that some form of global citizenship is needed in order to protect human rights globally². Critics of this position have demonstrated that it overlooks the importance of self-governance and state sovereignty as fundamental to political freedom, which demands that subjects of the law should also be its authors³. However, the rejection of political cosmopolitanism can be combined with the embracement of moral cosmopolitanism, asserting the existence of a global moral community where respect for human dignity, and, therefore, the recognition of the human rights of each individual, is not limited by national citizenship and borders.

Moral cosmopolitanism is in many respects a reasonable position, especially if we take into consideration the challenge of establishing the rights of refugees and migrants. It is also valuable as a critique of national identity politics when it tends to reduce sovereignty to the preservation of conventional norms and institutions. The main weakness of moral cosmopolitanism, however, is the fact that even this position can be constructed as a legitimization strategy for the unjust dominance of the Global North⁴.

In this paper, I argue that in order to construct a justified, non-violent form of moral cosmopolitanism, we need to scrutinize the moral universalism that is a crucial part of any reasonable cosmopolitan position. Utilizing the discussion on human rights universalism, I distinguish between descriptive and epistemological universalism on the one hand, and normative universalism on the other. It is argued that descriptive and strong epistemological universalism must be rejected as aggressive forms of universalism that legitimize domination. Critical universalism, which is a form of open, normative universalism, is defended as justified in that it has a powerful potential to inspire political liberation within different traditions without legitimizing the cultural monopolism and violence of the Global North.

¹ *Rajagopal B.* International Law from Bellow. Development, Social Movements and Third World Resistance. Cambridge, 2003. P. 171.

² One example of the human rights-related defense of political cosmopolitanism is the position of A. An-Na'im (see: *An-Na'im A.* Muslims and Global Justice. Philadelphia, 2011).

³ This critique is developed by theorists such as Seyla Benhabib, Rainer Forst, and Martha Nussbaum. For an analysis of the critique of political cosmopolitanism, see: *Grenholm C-H.* Refugee Rights and Global Justice in Religious Ethics. Uppsala 2015 (<http://www.ep.liu.se/ecp/097/010/ecp12097010.pdf>, accessed on 12.12.2018).

⁴ One example of such legitimization is David Hollenbach's defense of the extensive interpretation of the responsibility to protect. In the name of the universal protection of human rights, this interpretation justifies the violation of national sovereignty (*Hollenbach D.* Refugee Rights. Ethics, Advocacy, and Africa. Washington, 2008. P. 185).

Cosmopolitanism, human rights, and citizenship

As already stated, human rights cosmopolitanism can be shaped as either political or moral. A political cosmopolitanism of human rights implies that if human rights are to be protected as the universal rights of each and every person, national sovereignty must be restricted, or even abandoned. Moral cosmopolitanism seeks to combine the affirmation of collective sovereignty with the aspiration to a universality of human rights. The main argument of this essay is that a moral cosmopolitanism of human rights is justified if combined with an open, critical notion of universality. Before I proceed to this argument, something must be said about the reasons for rejecting a political cosmopolitanism of human rights.

The political cosmopolitanism of human rights can be constructed as a utopian cosmopolitanism of global government, but it can also be shaped in terms of *realpolitik* when cosmopolitanism is used to protect the interests of powerful states. Moreover, different forms of political cosmopolitanism can be combined in several variations⁵. It is beyond the scope of this essay to discuss all these different forms. Instead, I argue that all forms of political cosmopolitanism undermine a crucial democratic dimension of human rights, the only dimension where human rights can become an instrument of social transformation and, therefore, social justice.

I understand the democratic political dimension as follows: human rights include a strong egalitarian potential that can inspire social transformations. If each and every person is equally entitled to human rights, any concrete form of social inequality cannot be accepted as “normal”. Social inequalities, viewed through the prism of human rights, must be either justified⁶ or described as unjust and, therefore, demand transformation of social institutions. Such transformations, in turn, presuppose the existence of *political citizenship*, i.e. a mode of existence that enables private individuals to become subjects of a dynamic social contract. Only within such a contract can human aspirations become rights. In other words, political citizenship is a type of agency that is needed in order for human beings to participate in the struggle for the creation of concrete settings of rights. Many historical developments follow this pattern. Women’s liberation in many countries, as well as the liberation of different oppressed groups, takes the form of political struggle in order to turn abstract human rights into concrete and legally protected rights. In most cases, such creation demands rather radical institutional changes and, therefore, challenges the existing power balance.

When proponents of political cosmopolitanism argue against national sovereignty, they question the order in which citizenship is crucial for the protection of

⁵ One example of such a combination of a moral justification of cosmopolitanism with a clear position on *realpolitik* is M. Ignatieff’s human rights interpretation. He used to defend the former and came to be one of the authors behind the *Responsibility to Protect (Ignatieff M. Human Rights as Politics and Idolatry. Princeton, 2001)*.

⁶ I can think of two ways to justify concrete forms of social inequality. One is to demonstrate that the inequality in question does not lead to discrimination in terms of the protection of human rights. Another, more realistic, scenario would be to demonstrate that the inequality, although discriminatory, can be tolerated due to a conflict with a stronger right. There can be legitimate reasons to make political priorities that justify the inequality in question.

a person's rights. Every human being should be equally entitled to human rights, they claim⁷. Although this is correct, political cosmopolitanism tends to view human rights as something which exists independently of political and social contexts, something similar to commodities that can be universally distributed to individual human beings by some sort of transnational authority. What is missing here is the insight that rights are institutions that are socially created in concrete political processes. The creation of rights demands political citizenship, and, therefore, popular sovereignty⁸.

National sovereignty does not secure political citizenship, but it does constitute its prerequisite. I agree with contemporary philosophers such as R. Forst and B. Kapustin, who argue in favor of an understanding of human rights as strongly related to political citizenship and, therefore, to democracy as a collection of transformative political practices. In the words of Kapustin, "[...] any consumption of rights in the mode of 'legal citizenship' is threatened if it is not secured by the creation of rights in the sphere of 'political citizenship'"⁹. "Consumption" here denotes rights that are granted to citizens and that can be viewed and practiced as commodities. Citizens expect such rights-commodities to be distributed by the state. Rights in the mode of consumption confirm, but do not transform, legal citizenship – i.e. a setting of legal rights and therefore a social status – into political citizenship. This is because a political citizen is not just a private individual whose rights are granted by the state; she is also, and most importantly, an agent in the political struggle for social justice. It is, therefore, crucial that political citizenship as the social production of rights is primary in relation to legal rights, and that the production of rights is justified and inspired by the moral ideal of the equal respect for human dignity. My legal status as a citizen of Sweden gives me access to the rights that are enshrined in Swedish law. However, it is my political citizenship; i.e., my participation in the social production of rights, that might defend several fundamental rights which are now questioned within European and Swedish political discourse.

As already stated, marginalized and oppressed groups within a society are often the most progressive agents of the social creation of rights. Forst, looking for a conceptualization of human rights which combines moral universalism and the institutional aspects of rights protection¹⁰, convincingly argues that "[...] one must not overlook the central *social* aspect of human rights, namely, that when and where

⁷ My definition of political cosmopolitanism corresponds to Thomas Nagel's, when he states that cosmopolitanism demands "[...] a common system of institutions that could attempt to realize the same standards of fairness or equal opportunity that one wants for one's own society" (*Nagel T. The Problem of Global Justice / Philosophy and Public Affairs. 2005. Vol. 33. No. 2. P. 119*). In the realm of human rights, this kind of cosmopolitanism is used in order to strengthen transnational institutions such as the ICC.

⁸ I agree with O. O'Neill's critique of the cosmopolitan vision of justice as developed by, among others, Pogge and Hale. O'Neill warns us that global governance might "[degenerate] into global tyranny and global injustice" (*O'Neill O. Agents of Justice // Global Justice / Ed. by Pogge, T. Oxford, 2001, P. 188–189*). My argument is related, but I make a stronger claim, viewing sovereignty as a precondition of political agency, and, therefore, of the democratic creation of human rights institutions.

⁹ *Капустин Б.Г. Гражданство и гражданское общество. М., 2011. С. 119.*

¹⁰ *Forst R. Justification and Critique. Cambridge: Polity Press, 2014. P. 68.*

they have been claimed, it has been because the individuals concerned suffered from and protested against forms of oppression and/or exploitation that they believed disregarded their dignity as human beings”¹¹.

Citizenship as a political mode, enabling individuals and groups to become agents of the political, can and should be strengthened by human rights as the claim for universal respect for equal human dignity. However, political agency is conditioned by collective independence – only within the political borders of sovereign nations can universal rights become an instrument for the transformation of the social contract. Therefore, collective independence is not just a protection against direct violations by foreign agents. It is also about the right to collectively create and sustain the political.

Reciprocally, human rights lose their transformative liberating potential if reduced to the apolitical protection of already recognized interests and demands. In this regard, politics, when framed in terms of a national identity to be preserved, has lesser transformative potential and tends to domesticate human rights by creating cultural lists of rights or priorities of rights. Unfortunately, this is a current trend within human rights politics; human rights are viewed as instruments of liberation of the other on the international level, while at the same time they are treated as apolitical lists of conventional norms and priorities within the political spaces of nation states. Let me take one example of this trend, namely, the current politics of Russia. Most political parties in the country support president Putin and the United Russia party in their view that the priority of national sovereignty should be defended against the USA and its allies, who are accused of monopolizing the meaning and implementation of values such as human rights and democracy. Although the criticism of American imperialism is justified, in the Russian political discourse, sovereignty is often reduced to a collective right to preserve “traditional values”. These values are, in turn, described as values of private morality and patriotism. I argue that such an understanding of sovereignty must be questioned. The sovereignty of Russia implies the country’s right to the independent creation of concrete settings of rights. This means a collective sovereignty against foreign domination or, in the words of Philip Pettit, “external non-domination”¹². However, the sovereign creation of rights is hindered if reduced to a non-political vision of the preservation of traditional norms. The most meaningful interpretation of national identity is, in my view, that of collective and externally non-dominated agency. It can imply the right to preserve norms and conventions but should not be reduced to it.

If my argumentation is correct, for a justified interpretation and practice of human rights it is crucial to sustain and strengthen the link between universal human rights, on the one hand, and national sovereignty as a crucial prerequisite of political citizenship, on the other. Human rights have the potential to transform the private individual into a citizen, and, therefore, they can contribute to the radical improvement of social institutions. Additionally and importantly, the link between human rights and political citizenship can and should be used for critiquing the misuse of human rights by global actors with stronger economies and militaries. However, even when

¹¹ Forst R. *Justification and Critique*. Cambridge: Polity Press, 2014. P. 38.

¹² Pettit P. *Just Freedom. A Moral Compass for a Complex World*. NY and London, 2014. P. 150–157.

sovereignty includes the important demand for the recognition of identity, it should not be reduced to the preservation of it.

Let us now turn to the most frequent and, indeed, most important objection to the principle of national sovereignty. It is reasonable to claim that this principle can be, and is, used as a justification for refusing to protect the human rights of non-citizens. But must the rejection of political cosmopolitanism and the endorsement of national sovereignty lead to a justification of excluding the human rights of stateless individuals from protection? Was H. Arendt right when she claimed that stateless persons lack the fundamental right to have rights, thereby challenging the very idea of *human rights*?¹³.

The challenge of protecting the human rights of stateless individuals was present from the very creation of the global regime of human rights. The United Nations was, and still is, an organization of nation-states that, naturally, view citizenship as the basis for the recognition of legitimate claims, i.e. rights. Non-citizens, who often are the most vulnerable human beings, are, therefore, excluded from the protection of human rights when it is related to citizenship. One example of this exclusion is the fact that the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* does not include the prohibition of discrimination against non-citizens. In the second paragraph of Article One, the document stipulates: "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens". The most dramatic current example of this exclusion is the situation of war refugees who are refused the right to enter the safe space of Europe.

Does this mean that human rights proponents critical of sovereignty are correct? It is obviously a contradiction to claim the universality of human rights when denying those rights to non-citizens. Universal human rights should be recognized by means of one and only criterion – the humanity of persons. Citizenship should not be required in order to have one's human dignity respected. This implies that asylum seekers and migrants must be recognized as having human rights by all states on any territory. However, this does not imply that citizenship is irrelevant—rather, it implies that it is viewed differently. Citizenship is crucial for the creation of rights, but when the contract on rights (the law) is in place, human rights should not be refused to non-citizens. If a law of a country A stipulates that B is a human right, B should not be refused to a non-citizen. However, the legislation behind B should be a product of politics protected by the principle of national sovereignty. Contrary to what vocal xenophobic parties in Europe claim now, refugees do not threaten sovereignty. Sovereignty means protection from powerful international players, other states, or groups of states.

To summarize the discussion so far, human rights do not require political cosmopolitanism; rather, they require recognition of the fact that any concrete setting of interpretation and protection of rights is a social contract and is related to political citizenship and collective sovereignty. Therefore, we need to find ways of interpreting and practicing human rights that fulfil two criteria. The first criterion is the firm recognition of *political citizenship* as a means for the creation and justifica-

¹³ Arendt H. *The Origins of Totalitarianism*. New edition. San Diego, NY, London, 1973. P. 296–297.

tion of any concrete setting of the institutional protection of human rights. The political and moral evaluation of the protection of rights is fundamentally related to the universal and, therefore, egalitarian promise of equal respect for human dignity. Such a promise is never fully implemented, but it can and should become an instrument of democracy in political spaces constituted by agents who are simultaneously authors and subjects of the law. The second criterion is the relativization of the importance of citizenship for entitlement to rights-based protection. Rights cannot be legitimately denied to any human being if they are human rights. This means that human rights demand moral cosmopolitanism; i.e., the recognition of every person as equally entitled to protection of her human dignity.

However, the moral cosmopolitanism of human rights can be interpreted in different ways. How, then, can we distinguish justified forms of moral cosmopolitanism? How can we prevent the moral cosmopolitanism of human rights from becoming yet another form of cultural imperialism? My hypothesis is that in order to discriminate between a justified moral cosmopolitanism of human rights and an illegitimate cultural imperialism of human rights, we need to critically evaluate the universalism underlying different forms of moral cosmopolitanism. In what follows, I discuss the concept of universalism that, in my view, can strengthen human rights as a form of legitimate moral cosmopolitanism.

Three types of human rights universalism

Let me start by highlighting an important distinction between three different, but related, forms of universalism. These forms can be labeled in various ways and are recognized by some philosophers and ethicists. The terminology adopted here has been developed by the Swedish ethicist C-H. Grenholm¹⁴. The first type of universalism is *descriptive* and states that there are some norms that are shared trans-contextually. More sensitive descriptive universalists would claim that while norms might appear different, they are substantially the same. Martha Nussbaum's defense of the universalism of human rights in her *Women and Human Development* represents an example of such a position¹⁵ [24]. Despite acknowledging the existence of what she calls "obtuse universalizing", Nussbaum maintains that "[c]ertain basic aspirations to human flourishing are recognizable across differences of class and context [...]"¹⁶. It is not unusual, then, to find philosophers restricting their descriptive universalism to negative norms, such as the condemnation of violence or the prohibition of murder, on the grounds that a shortlist of such prohibitions would be an object of ready universal consensus¹⁷.

The second form of universalism is *normative*. It contends that, regardless of factual disagreements, moral norms must include the claim to universal validity.

¹⁴ Grenholm C-H. Etisk teori. Kritik av moralen. Lund, 2014.

¹⁵ Nussbaum M. *Women and Human Development. The Capabilities Approach*. Cambridge, 2000.

¹⁶ Ibid. P. 31.

¹⁷ Ignatieff M. *Human Rights as Politics and Idolatry*; Miller D. *Human Rights in a Multicultural World // Mänskliga rättigheter – från forskningens frontlinjer* / Ed. By D. Amneus, G. Gunner. Uppsala, 2003. P. 39–50.

This form of universalism states that although people often disagree on the issue of justified norms, moral norms should be judged by the criterion of universalization. While normative universalists differ as to how these universal norms are to be identified, it is not unusual for normative universalism to be combined with some form of rationalism. Arguably, the most influential universalist is Immanuel Kant, who defends the position that only norms that can be universalized by the proper use of reason are authentically moral norms¹⁸. As R. Hare observes in his seminal work *Moral Thinking*:

Universalizability can be explained in various equivalent ways; it comes to this, that if we make different moral judgments about situations which we admit to be identical in their universal descriptive properties, we contradict ourselves¹⁹.

The third form of universalism is *epistemological* and claims that the justification of valid norms should transcend contextual differences. According to this form of universalism, justifying a norm requires that it be made universally reasonable; that is to say, reasonable for every rational person in every context. The Enlightenment is often – in my view, correctly – regarded as the culmination of such epistemological universalism. Kant's famous axiom *Sapere aude!* (Dare to use your own reason!) in *Was ist Aufklärung?* (1784) asserts that there is a single correct path to reason which is potentially discoverable by anyone who reasons freely.

How, then, are human rights universal, and when do they become an instrument of imperialistic domination? In what follows, I will examine several arguments against the notion of the universality of human rights, while bearing in mind that such universality can mean three different things. First, that human rights are descriptively universal, that is, universally acknowledged. Second, that human rights aspire to universal validity; and third, that the justification for human rights is universal. As already stated, the purpose is to evaluate different visions of the universality of human rights, and to relate this evaluation to moral cosmopolitanism.

One line of criticism of the belief in the universality of human rights highlights the tendency of the Global North to disregard other political and cultural traditions by universalizing its own conventional values. Typically, the normative individualism of modern liberalism is presented as universally characteristic of human rights. This individualism holds that the value most deserving of strong protection is individual freedom of choice. M. Ignatieff is a prominent defender of the idea that such individualism *is* a universal value. He writes:

... Western human rights activists have surrendered too much to the cultural relativists' challenge. Relativism is the invariable alibi of tyranny. There is no reason to apologize for the moral individualism at the heart of human rights discourse [...] rights discourse *is* individualistic [...] Human rights is morally universal because it says that all human beings need certain specific freedoms "from"; it does not go on to define what their freedom "to" should consist in²⁰.

¹⁸ Kant I. *Grundlegung zur Metaphysik der Sitten*. Leipzig, 1920. P. 20.

¹⁹ Hare R. *Moral Thinking. Its Levels, Method and Point*. Oxford, 1981; Nagel T. *The Problem of Global Justice // Philosophy and Public Affairs*. 2005. Vol. 33. No. 2.

²⁰ Ignatieff M. *Human Rights as Politics and Idolatry*. P. 74–75.

It is obvious that although he is aware of non-Western critiques of human rights individualism, Ignatieff asserts its universality.

Opponents of Ignatieff argue that a particular feature of Western liberal human rights culture, namely, its individualism, is uncritically presented by its proponents as universal. The alternatives to such universal individualism are described by liberals as mere historical and cultural particularities to be overcome. It is beyond the scope of this essay to develop an argument in defense of either individualism or non-individualism. Nonetheless, it may reasonably be asked whether presenting one's own tradition, in this case liberal individualism, as universally binding in fact suppresses the other's right to present arguments for the validity of their tradition. Needless to say, all traditions are dynamic and demand critical interpretation. But by labeling one tradition as universal, we deny the other the right to self-determination²¹, and, in the process, remain uncritical of our own tradition.

A variant of this critique of human rights universalism is to be found in the skepticism toward how many human rights agents prioritize human rights. A habit of avoiding explicit discussion of the issue of prioritizing among conflicting rights has been discussed by scholars such as L.W. Sumner. In his seminal work *The Moral Foundation of Rights*, Sumner argues persuasively that in order to give a comprehensive definition of a right, it is first necessary to present a reasonable understanding of its strength. As Sumner states:

[...] the strength of a right is its ability to override, or susceptibility to being overridden by, competing moral considerations. The strength of a right has been completely specified when its weight has been given relative to every sort of consideration with which it might compete²².

While actors in different situations may legitimately argue in favor of different understandings of the strength of various rights, to ignore the need for transparent discussion of the subject runs the risk of increasing the misuse of the concept of human rights. One such misuse is the tendency to assert the universality of some highly contextual priorities between rights. As far as I can see, Western political cultures evince a widespread tendency to frame certain priorities of rights as universal. Non-Western actors are more inclined to argue that priorities be understood as contingent upon contextual factors such as culture, religion, or tradition. When Western human rights agents argue for according a stronger status to traditional liberal rights (freedom of speech, freedom of religion interpreted as a negative right, sexual rights, etc.) they tend to present these priorities as universally binding. This stands in sharp contrast to non-Western societies, whose human rights agents often rationalize their priorities in terms of "Asian values" or "Sharia-related priorities"; that is, without claiming that their reasoning is universally binding. Western liberal critics of this position question it on the grounds that traditions can be, and often

²¹ I believe it is crucial to recall the long history of liberal imperialism and colonialism when we discuss contemporary politics and political ethics of human rights. There are significant contributions made by professional historians that deserve our attention here (*Grenholm C-H. Etisk teori. Kritik av moralen. Lund, 2014*).

²² Sumner L.W. *The Moral Foundation of Rights*. Oxford, 1987. P. 124.

are, used to legitimize human rights violations. While this is true, it is also true that various liberal cultures make different tradition-related priorities between rights.

Japanese scholar of international law Y. Onuma maintains that the framing of contextual Western priorities as normatively universal is very often carried out by influential international NGOs. Well-established human rights actors such as *Amnesty International* are clearly in thrall to the Western human rights agenda. Onuma demonstrates that reports produced by organizations such as *Amnesty International* and *Human Rights Watch* mostly deal with civil and political rights and are less than transparent in how they set their priorities²³. In a recent study titled “International Law and Power in the Multipolar and Multicivilizational World of the Twenty-first Century”, Onuma remains critical of international Western NGOs. He writes:

However, it cannot be denied that the basic assumptions, ways of thinking, and cultural propensities of many influential NGOs are evidently West-centric. Most of the globally influential NGOs are based in the West; NGOs in Asia and Africa are far less influential. To make matters worse, some of the non-Western NGOs are even more Western-centric than their Western counterparts, because of their members’ educational backgrounds in the West, their inferiority complex toward Western society, and their elitist status in their own societies²⁴.

Onuma’s critique warrants our attention, I believe, not least because it seems clear to me that framing a specific prioritization of rights as universally normative can easily be combined with a rejection of the other’s right to present arguments for an alternative prioritization strategy. In this view, such a rejection can serve to legitimize stigma, and even racism, in ways that fundamentally undermine the credibility of the concept of human rights. A very recent example of how human rights can be co-opted by a racist agenda can be seen in the European discourse on the defense of freedom of speech. Freedom of speech is publicly declared to be under threat by Islam or “Islamic values” even though there is very little evidence to support the claim that freedom of speech in Europe is seriously threatened by powerful Islamic actors. What is obvious is the fact that a few desperate and occasionally violent acts by individuals convinced that some modes of free speech must be restricted because they violate Islamic tradition have been represented as posing a threat to European democracy and human rights. A clear contrast emerges when we consider that far more common legal and political restrictions of freedom of speech – namely, those based on security – are not viewed as dangerous to the same degree. Nor is there any significant discussion of how the serious underrepresentation of Islamic voices in public space in Europe poses a threat to freedom of speech and, thus, democracy.

The tendency of powerful actors within human rights discourse to present their view of human rights as normatively universal has been criticized from the vantage

²³ Onuma Y. *Toward an Intercivilizational Approach to Human Rights // The East Asian Challenge for Human Rights* / Ed. By J.R. Bauer, D. Bell. Cambridge, 1999. P. 113.

²⁴ Onuma Y. *International Law and Power in the Multipolar and Multicivilizational World of the Twenty-first Century // Legality and Legitimacy in Global Affairs* / Ed. By R. Falk, M. Juergensmeyer, V. Popovski. Oxford, 2012. P. 186.

point of communicative ethics²⁵. This tendency ignores a crucial norm of human communication, namely the recognition of the other's equal entitlement to be a discursive agent. Later in this essay I discuss how a coherent human rights universalism might be constructed. For now, let me simply emphasize that when Western liberal views of human rights are labeled universal in the sense of being beyond a need for further deliberation, human rights are likely to be transformed into an instrument of unjust communication and political or military violence. The increasing invocation of human rights as a justification for international military operations with the goal of effecting regime change in sovereign countries is the most alarming of these contemporary developments²⁶.

To summarize the discussion so far, several forms of human rights universalism need to be scrutinized. First, we need to critique the tendency to elevate normative conventions set by those with most power to the status of a core foundation for universal human rights. Second, we need to critique a universalism which allows the dominant liberal view of how to prioritize conflicting human rights adequately to exclude other reasonable alternative visions of how such rights can be implemented and balanced. The third problematic form of universalism is the dominant "self-righteous idealistic universalism"²⁷ of Western agents, as Onuma has called it, which, in many cases, prevents other agents from playing an equal part in deliberations about human rights.

What does such scrutiny mean in terms of the three forms of universalism of rights presented above? The descriptive universalism of human rights must be firmly rejected. Human rights are always institutionalized and constructed in different concrete social settings and cultures. Therefore, to disregard differences in interpretations as well as in priorities is to contribute to the unjust monopolization of ideational power. Such monopolization legitimizes international violence at the same time as it contributes to a democratic deficit domestically.

The epistemological universalism of human rights is ambivalent. On the one hand, the ideal of universal rationality encourages social critique and, therefore, political and social liberation. On the other hand, an epistemological universalism can be framed as a rejection of the other's equal right to define reason and rationality. Therefore, I believe that we should question any form of strong epistemological universalism; i.e., the idea that universal criteria of rationality can be uniformly formulated and applied to any context at any time. This being said, I still defend a weaker version of epistemological universalism. Such a universalism recognizes reason as embedded in concrete social structures and simultaneously states that peo-

²⁵ Benhabib S. Claiming Rights across Borders: International Human Rights and Democratic Sovereignty // *American Political Science Review* 2009. Vol. 103, No. 4. P. 691–704.

²⁶ My own view is that the extended interpretation of the *Responsibility to protect* is used, in violation of UN treaties, to legitimize interventions in sovereign states, thereby causing state collapses and refugee catastrophes. (Byers M. *International law and Responsibility to Protect* // *Theorising the Responsibility to Protect* / Ed. by R. Thakur, W. Maley. Cambridge, 2015. P. 119–124; Miller D. *Human Rights in a Multicultural World*. P. 265–292)

²⁷ Onuma Y. *Transcivilizational Perspective on International Law: Questioning Prevalent Cognitive Frameworks in the Emerging Multi-Civilizational World of the Twenty-First Century*. Leiden, 2010. P. 152–153.

ple can reason trans-contextually²⁸. The question that any plausible theory of weak epistemological universalism must address is, thus, “what material and ideational conditions are needed in order to make trans-contextual reasoning possible”?

Lastly, I believe that the normative universalism of human rights must be defended and further developed. Normative universalism should be framed in a way that, on the one hand, prevents human rights from becoming an instrument of international violence, and, on the other hand, sustains the transformative political potential of human rights in different societies. This form of universalism constitutes the very core of a justified moral cosmopolitanism. I call this normative universalism of human rights critical normative universalism, and describe it in the following, concluding part of this essay.

Critical universalism: toward a non-aggressive, emancipatory vision of human rights

Let me further clarify my view on moral normativity. My position might be described as materialist value constructivism. It views moral values as social constructions related to concrete societies and concrete positions held by people within complex relations marked by economic, political, and discursive power. Justice, peace, human rights, and any other moral values acquire force by virtue of social perspectives. What does this mean? First, it means that in order to change the moral norms of a society, we need to address its social structure. Secondly, it means that it is very often the marginalized groups who articulate progressive challenges to the moral conventions of any given society. Thirdly and most importantly, materialist constructivism is not a nihilistic position. I believe that although moral conventions reflect the social positions of individuals and groups, materialist constructivism involves a critical level of practical rationality that makes it possible to approach moral conventions critically and self-critically. If applied to the issue of the universality of human rights, it means that universal human rights cannot be presented from a position that is not a particular position. These positions are involved *ipso facto* in a struggle over universality that challenges their particularism.

The constructivist critique of the universalism of human rights highlights the risk of exclusion with regard to marginalized social positions. One of the more influential analyses of how powerful actors acquire and maintain a monopoly on universality has been developed by French sociologist P. Bourdieu. Bourdieu makes use of Austin’s term “scholastic view” to denote a position of reasoning “distanced from necessity and urgency” that, in turn, presupposes material conditions unavailable to most people. Bourdieu’s “scholastic view” includes the claim to universality. As he observes:

Most of the human works that we are accustomed to treating as universal – law, science, the fine arts, ethics, religion, and so forth – cannot be dissociated from the scholastic point of view and from the social and economic conditions which make the latter possible. They have been engendered in these very peculiar social uni-

²⁸ My notion of trans-contextuality includes class as well as cultural and political differences.

verses which are the fields of cultural production – the juridical field, the scientific field, the artistic field, the philosophical field – and in which agents are engaged who have in common the *privilege* of fighting for the monopoly of the universal, and thereby effectively promoting the advancement of truths and values that are held, at each moment, to be universal, indeed eternal²⁹.

As a result of various material conditions, most people are excluded from what Bourdieu calls the struggle for the legitimate monopoly over the universal³⁰. The advantage of Bourdieu's approach to this struggle is that he neither demonizes the winners nor idealizes the marginalized. What he demonstrates is, rather, the social logic of exclusion within the discourse on universal values.

With all this in mind, we can now further clarify the notion of critical universalism of human rights. The universality of human rights is a mere normative universality that recognizes the ambivalence of human reason as both context-dependent and context-transcending. Critical universalism is Kantian in the sense that it obliges us to make serious efforts to reason about human rights in a way that makes those rights universally recognizable. No concrete setting of the protection of human rights is beyond critique if human rights are normatively universal. As K. Günther's observes: "[...] critical self-correction is part of the claim to universalism"³¹.

Further, Kantian normative universalism is a powerful critical instrument to be applied to the politics of identity when such politics undermine the legitimacy of social groups and individuals who challenge existing conventions and power structures. Although collective self-determination might include different visions of national identity, domestic political visions should not be framed in terms of the identity protection. As already mentioned, recent developments in Europe and the USA demonstrate how the "identification" of human rights – i.e. using human rights as an essential part of European, Swedish, or another identity – transforms them into yet another instrument of domination and xenophobia and, simultaneously, deprives human rights of their critical democratic potential. Therefore, the normative demand for the universalization of any justified norm counteracts, or at least can be used for counterstrategies against, the reduction of sovereign politics to identity protection.

At the same time, the critical universalism that I am defending challenges Kantianism in that it relates practical reason to social practices and thereby links human rights to their institutionalized protection and the social positions of both individual human beings and groups. The normative constructivism I have in mind is a materialistic understanding of the political potential of human rights. Social emancipation from concrete forms of domination and oppression turns human rights into an instrument of social transformation. Inversely, the possession of power tends to transform human rights into a discourse of legitimization of that power³².

²⁹ Bourdieu P. Practical Reason. On the Theory of Action. Stanford, 1998. P. 135.

³⁰ Ibid. P. 139.

³¹ Günther K. The legacies of Injustice and Fear: A European Approach to Human Rights and their Effects on Political Culture // The EU and Human Rights / Ed. by P. Alston. Oxford, 1999. P. 122.

³² One sign of such a transformation is a tendency to turn human rights responsibilities into a bureaucratic exercise of document production. The Swedish case is interesting here. In the summer 2016, the Swedish parliament passed a law (Lag 2016–752) that dramatically reduces the possibility of refugees, minors included, to reach Sweden and gain asylum. Simultaneously, the government has

I believe that the dialectic of critical universalism captures the uniquely liberating potential of practical reason; i.e., ethics. The desire for universal values and just institutions is an essential feature of ethics that, in every authentic application, remains radically critical of concrete conventions and institutions. My claim is thus that universalism is only justified as a mere normative universalism that can inspire liberation without exclusion and, therefore, makes institutional transformations possible. Importantly, this universalism deconstructs any concrete liberation and institutional setting as, simultaneously, a (new) form of oppression. Therefore, I describe my notion of the universalism of human rights as an open universalism. To quote S. Benhabib: “[u]niversalism is an aspiration, a moral goal to be strived for; it is not a description of the way the world is”³³.

To conclude in political terms, the position defended in this essay means an embracement of the moral cosmopolitanism of human rights that is non-violent due to its rejection of both the descriptive and the strong epistemological universalism. Such a cosmopolitanism confirms the importance of political citizenship as the single legitimate instrument of social transformation. The moral cosmopolitanism of human rights, when built upon an open normative universality, acknowledges the importance of national sovereignty and identity at the same time as it rejects any reduction of the political to efforts to sustain the existing conventions and institutions.

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announced the plan to create *The Human Rights Institute* and produces new human rights documents that demand that authorities within the state create such “plans” in different parts of the country.

³³ Benhabib S. Is There a Human Right to Democracy? Beyond Interventionism and Indifference // *Philosophical Dimensions of Human Rights. Some Contemporary Views* / Ed. by C. Corradetti. Dordrecht, Heidelberg, London, New York, 2012. P. 198.

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Космополитизм, суверенитет и права человека – В защиту критического универсализма

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Цель данной статьи – внести вклад в обсуждение соотношения между принципом государственного суверенитета, с одной стороны, и универсальностью прав человека –

с другой. В анализе используется разведение понятий политического и морального космополитизма. Защитники первого считают, что защита прав человека требует поисков форм для глобального правительства. Критики политического космополитизма считают, что он не учитывает демократического значения самоуправления, суверенитета – именно он является предпосылкой политической свободы. Эта критика справедлива, но не требует отрицания морального космополитизма, то есть утверждения, что политический суверенитет может сосуществовать с глобальным моральным сообществом и универсальностью принципа уважения человеческого достоинства.

В этой статье я обсуждаю формы универсальности, необходимые для разумной и неагрессивной модели морального космополитизма. Три формы универсализма обсуждаются – дескриптивный, эпистемологический и нормативный. Только последний, развитый как «чистый нормативный универсализм», является, с моей точки зрения, обоснованной позицией. Эта форма позволяет соединить принцип суверенитета с освободительным политическим потенциалом прав человека.

Ключевые слова: космополитизм, нормативный универсализм, критический универсализм, права человека и суверенитет