



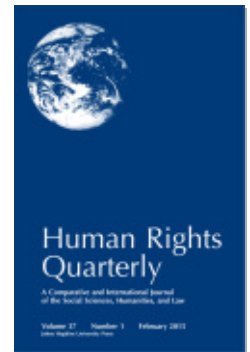
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Safeguarding the Universal Acceptance of Human Rights Through the Receptor Approach

Tom Zwart*

ABSTRACT

The receptor approach relies on ethnographic research to identify social institutions and cultural values that match international human rights obligations. Where these institutions and values fall short, home-grown remedies are used to amplify them. The receptor approach provides a practical tool to activists and states. In addition, it welcomes culture as a potential source of human rights rather than dismissing it as an impediment to their protection. Yvonne Donders and Vincent Vleugel's position that it is "old wine in new bags" is therefore unfounded. The same is true for their argument that it pits "the West against the rest." Research shows that regional values are still notably different. States are entitled to take these cultural differences into account when implementing their human rights obligations. Denying them their right to do so will force Southern states to disengage.

The debate on the implementation of human rights is still dominated by a supposed opposition between human rights and culture in many parts of the world.¹ On the one end are those who believe that human rights ought to be applied uniformly, regardless of national or local context. They see culture

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This reply was co-authored with Nora Al Haider, Elena Butti, Julie Fraser, Augustine Hungwe, Stacey Links, Ingrid Morgan, Michael Odhiambo, Henrike Prudon, and Congrui Qiao, who comprise the Receptor Research Team, Netherlands School of Human Rights Research

1. Yvonne Donders & Vincent Vleugel, *The Receptor Approach: A New Human Rights Kid on the Block or Old Wine in New Bags? A Commentary on Professor Zwart's Article in HRQ*, 36 HUM. RTS. Q. 655 (2014).

as potentially undermining human rights and therefore try to downplay its role:² they stress that culture is not monolithic but rather dynamic, contested, and should not be romanticized or reified.³ On the other end are those who regard human rights as a threat to their culture:⁴ to them human rights are a Trojan horse filled with alien values meant to undermine their way of life.⁵

This perceived opposition between human rights and culture seriously undermines the human rights project. The stand-off allows leaders who are not supportive of human rights to dilute or forsake their obligations with the help of cultural excuses. On the other hand, it is necessary for states to sign on to the human rights regime in order for it to flourish.⁶ The influences of regions like Asia, in particular China, and Africa, which cherish their own distinctive cultures, is on the rise, while Europe is losing its leverage to push for a de-contextualized approach.⁷ If things do not change there is a real risk that Southern⁸ states will disengage.⁹ Therefore, a way out of this impasse has to be found that joins the universality of human rights to genuine respect for national and local culture. By making them universally acceptable, the universality of human rights can thus be safeguarded.

In issue 34/2 we proposed the so-called receptor approach to human rights as such a way forward.¹⁰ There can be no doubt that human rights are a Euro-American concept originating from the Enlightenment.¹¹ However,

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2. Elizabeth M. Zechenter, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, 53 J. ANTHROPOLOGICAL RES. 319 (1997).
 3. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 100–03 (2d ed. 2003).
 4. See, e.g., Hannatu Musawa, *Same-sex Marriage Alien to Our Culture and Religion*, LEADERSHIP, 22 Jan. 2014, available at <http://leadership.ng/columns/339638/same-sex-marriage-alien-to-our-culture-and-religion>.
 5. The Trojan horse metaphor has been taken from R. Panikkar, *Is the Notion of Human Rights a Western Concept?*, 30 DIOGENES 75, 101 (1982).
 6. At an early stage of the development of the international human rights regime, Khol already observed that for human rights instruments to be effective, they should not only offer a high level of protection, but also be acceptable to the largest number of states that may become parties to them. See ANDREAS KHOL, ZWISCHEN STAAT UND WELTSTAAT, DIE INTERNATIONALEN SICHERUNGSVERFAHREN ZUM SCHUTZE DER MENSCHENRECHTE (1969).
 7. Susi Dennison & Anthony Dworkin, *Towards an EU Human Rights Strategy for a Post-Western World*, European Council on Foreign Relations Policy Brief, available at <http://www.ecfr.eu/page/-/towards-an-EU-human-rights-strategy-for-a-post-western-world.txt.pdf>.
 8. As any distinction between West/East or North/South is contentious, this reply refers to “the South” as countries scoring lower than .5 or between .5-.8 on the Human Development Index, whereas “the North” refers to the wealthier and more industrialized nations of Europe, North America, Australia, and New Zealand, scoring more than .8 on the Human Development Index.
 9. This is what some African states appear to be doing with regard to the International Criminal Court, which in their view is targeting Africa and not paying enough respect to the African sense of justice.
 10. Tom Zwart, *Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach*, 34 HUM. RTS. Q. 546 (2012).
 11. LYNN HUNT, INVENTING HUMAN RIGHTS, A HISTORY (2007).

underlying the receptor approach is the idea that many human rights have long been part of all societies, including the Southern ones, in the shape of values and social institutions. Social institutions are sets of patterned strategies consisting of norms, values, and role expectations that people develop and pass on to succeeding generations for dealing with important social needs. By relying on ethnographic research, we are able to identify such social institutions and cultural values that match international human rights obligations. Where these institutions and values fall short of the obligations, they can be amplified with the help of home-grown remedies. Where possible, the receptor approach relies on the remedial force of local culture and the agency of the people rather than on decontextualized solutions per se.

The receptor approach builds on the important distinction that is being made in public international law between subscribing to standards and implementing them. While states are required to unreservedly meet the international obligations they have signed up to, it is left to their discretion to translate them at the national level. Consequently, while states parties are not allowed to invoke cultural reasons for failing to live up to their international human rights obligations, they are entitled to take the cultural, social, and political context into account when implementing them.

When we launched the receptor approach we hoped it would stir debate and lead to discussion. Therefore, we are grateful to our colleagues Yvonne Donders and Vincent Vleugel, who have made the effort to critique the concept in Issue No. 36/3. Although they have made a number of interesting points, we will limit ourselves to addressing two fundamental issues in particular. First, we will reply to their position that the receptor approach is "old wine in new bags," i.e. that it adds little to the current human rights discourse because it builds on earlier scholarly work. Second, we will react to their critique that the receptor approach is based on an artificial contrast between "the West and the rest."

The first major comment made by Donders and Vleugel is that the receptor approach mainly repeats what others have said about the relationship between culture and human rights. As acknowledged in the original article, there have indeed been scholars who have previously argued that human rights and culture should be realigned. The invaluable contributions made to the debate by Abdullahi An-Na'im¹² and Alison Renteln¹³ were discussed at length because they serve as our sources of inspiration. Our list was not meant to be exhaustive and some of the authors mentioned by Donders and Vleugel have indeed also touched upon the subject. However, these

12. Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment*, in *HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS* 19 (Abdullahi Ahmed An-Na'im ed., 1992).

13. ALISON DUNDES RENTELN, *INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM* (1990).

scholarly theories have not managed to turn the recognition of cultural differences into an established perspective.

Therefore, we submit that the receptor approach does more than reiterate a standard position on culture and human rights. We contend that this is the case because it is a step forward from earlier cultural approaches. This is so for three main reasons.

First, while relying on the theoretical groundwork of scholars like An-Na'im and Renteln, we conceptualized a new theory that can be turned into a practical tool by actors in policy and politics, like governments and NGOs. Therefore, the receptor approach does not limit itself to addressing theoretical problems, but also provides a practical framework for better protecting human rights around the globe. In only a short time span, a large number of academics and local NGOs in China¹⁴ and Africa¹⁵ have given their support and input to the project. Considering that this may undermine the dominance of the liberal model, it will require some adjustment.

Second, the receptor approach is fundamentally different from previous culturally sensitive approaches, as we argue that culture is an existing source of human rights protection, where earlier approaches still mostly portray it as a barrier. Especially in Southern states, culture and social institutions have traditionally served as the source for protecting human rights, and therefore can act as important building blocks for meeting international human rights obligations. This is not to say that, as Donders and Vleugel allege, we romanticize the notion of "culture" or "local communities." On the contrary, the specific goal of the second phase of the receptor approach, amplification, is to look for local remedies to improve the standard of human rights protected by existing social institutions, which may have shortcomings. In addition, while it is correct to be critical of any model of society that may restrict the enjoyment of human rights, Donders and Vleugel provide the example of possible "repressive tendencies" of communitarian societies without regard for issues that may arise within the context of individualist societies. In that sense, they in fact seem to argue for the "West is best"-model of society without due attention to legitimate alternative models.

Third, while recognizing that states may rely on law to implement their human rights obligations, we challenge its near monopoly by arguing that

14. In addition to scholars from the Institute of International Law of the Chinese Academy of Social Sciences and the Research Center for Human Rights of Shandong University, researchers from the Institute of Human Rights and Humanitarian Law of the China University of Political Science and Law and the Research Center for Human Rights of Nankai University have now also joined the project; China's most prominent human rights NGO, the China Society for Human Rights Studies, has offered a podium for papers on the receptor approach several times, including during its side event on the occasion of China's Universal Periodic Review in Geneva in October 2013.

15. An all-Africa network has been set up which involves members of civil society who support the receptor approach. It currently consists of 155 NGOs and 287 academics.

other social institutions and cultural values may take its place. The receptor approach acknowledges that sometimes local institutions may best be complemented by law, but also leaves room for the possibility that they can function as sufficient alternatives. In addition, although there is nothing preventing states from translating human rights obligations into individual claims and entitlements, the receptor approach acknowledges that they may also rely on duties and responsibilities as mirrors of individual rights. It also notes that types of conflict resolution, such as reaching consensus, settling differences through mediation, and pursuing harmony, can function as valid alternatives to the enforcement of individual rights through litigation.

The second "critical flaw" signaled by Donders and Vleugel is that the receptor approach pits "the West against the rest," which they consider a "gross generalization" and an "over-simplification." Undeniably the original article makes frequent distinctions between the "North" and the "South." However, this distinction flows from existing research which shows that values held in different parts of the world remain notably diverse. Thus, the periodic surveys conducted by the World Value Survey Association demonstrate that, although values are in continuous flux, regional values still notably differ.¹⁶ Of course, these value maps show a general picture that cannot always do justice to nuances and recent developments. For example, individualism appears to be on the rise in China,¹⁷ while household negotiations have reduced the authority once exercised by men in Sub-Saharan Africa.¹⁸ However, these differences have important consequences for the way in which human rights obligations are implemented. Overlooking them does not reflect reality and is therefore likely to be counterproductive.

This became apparent when many in the North criticized the ASEAN Human Rights Declaration (the Declaration)¹⁹ when it was adopted by ASEAN Heads of State on 18 November 2012.²⁰ The Declaration effectively contains all civil and political rights included in its global and regional counterparts²¹ and also lays out a catalog of economic, social, and cultural rights, conveying the "wholeness" of human rights. In addition, the Declaration has a number of innovative provisions. It urges ASEAN member states to create a positive environment to overcome the stigma, silence, denial, and discrimination in the treatment of HIV/AIDS sufferers. It stipulates that special protection is required for childbearing women and young mothers. The provision on

16. World Value Survey Association, *available at* <http://www.worldvaluessurvey.org/wvs.jsp>.

17. YUNXIANG YAN, *THE INDIVIDUALIZATION OF CHINESE SOCIETY* (2009).

18. Deniz Kandiyoti, *Bargaining with Patriarchy*, 2 *GENDER & SOCIETY* 274 (1988).

19. ASEAN Human Rights Declaration, *available at* <http://www.asean.org/news/asean-statement-communiqués/item/asean-human-rights-declaration>.

20. Catherine Shanahan Renshaw, *The ASEAN Human Rights Declaration 2012*, 13 *HUM. RTS. L. REV.* 557 (2013).

21. Absent is the right to association, while the right to asylum needs to be exercised in accordance with state law.

slavery aptly makes a reference to its modern version, human trafficking. There is also a provision that offers special protection to the vulnerable, such as women, children, the elderly, persons with disabilities, and migrant workers. Finally, it contains special protections for children against social and economic exploitation, which is absent in the Universal Declaration of Human Rights.

Despite these assets, the Declaration was not welcomed by governmental and nongovernmental organizations based in the North. Amnesty International, the International Commission of Jurists, as well as the UN High Commissioner for Human Rights, and the US State Department requested ASEAN to redo its homework.²² These critics object particularly to the provisions relating to the implementation of the Declaration's rights that have a regional contextual flavor. The Declaration emphasizes that individual rights have to be balanced with duties, and that their realization will have to take place within the political and cultural context of the societies concerned. These are regarded as signs of cultural relativism.²³

The critics fail to acknowledge that regional documents do not need to be clones of one another, as it is not a question of "one size fits all." It is not helpful to judge a document emerging from another region on what is absent from one's own regional perspective. This may not be the document that Europeans would have drafted, but it is arguably well suited to Southeast Asia. The Declaration legitimately stresses the need to perform duties, as well as emphasizes the importance of realizing human rights within their local context. Both of these aspects are likely to ensure that human rights have local resonance: in this way, people will accept and embrace human rights. Therefore, the duties and the contextual realization are the stronger, rather than the weaker, points of the ASEAN Declaration.

If the critics believe that the Declaration is in need of improvement, a stern rebuke is not the best way forward. This may simply back ASEAN members into a corner, which could result in disengagement from the human rights discourse. This has happened before.²⁴ During the 1990s, when states in Southeast Asia began referring to "Asian values," they were merely

22. Press Release, Amnesty Int'l, Postpone Deeply Flawed ASEAN Human Rights Declaration (5 Nov. 2012), available at <http://www.amnesty.org/en/for-media/press-releases/postpone-deeply-flawed-asean-human-rights-declaration-2012-11-05>; Press Release, Int'l Commission of Jurists, ICJ condemns fatally flawed ASEAN Human Rights Declaration (19 Nov. 2012), available at <http://www.icj.org/icj-condemns-fatally-flawed-asean-human-rights-declaration/>; United Nations Office of the High Commissioner for Human Rights, *Pillay Encourages ASEAN to Ensure Human Rights Declaration is Implemented in Accordance with International Obligations* (19 Nov. 2012) available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12809&LangID=E>; Press Release, US State Dept, ASEN Declaration on Human Rights (20 Nov. 2014), available at <http://www.state.gov/r/pa/prs/ps/2012/11/200915.htm>.

23. See Press Release, US State Dept., *supra* note 22.

24. MICHAEL D. BARR, *CULTURAL POLITICS AND ASIAN VALUES: THE TEPID WAR* (2002).

making the legitimate claim that human rights need to be implemented in a manner respectful of regional culture. Only when Northerners attacked this position did the “Asian values” debate turn into a challenge to the universality of human rights.

By tapping into the huge potential of culture to protect and promote human rights, the receptor approach has elicited contention, as is the purpose of academic debate. While we welcome and respect the critique by Donders and Vleugel, we continue to submit that using culture to further the implementation and effectiveness of human rights is the best remedy to safeguard the universal acceptance of their universality.