

The complex nature of cultural rights: opposing ethical interpretations
The case of Kurds and Basques¹

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Abstract

This paper will explain the complex nature of cultural rights in a general context by presenting the opposing ethical interpretations. In order to deal with this dilemma, the problems and debates of culture, and cultural rights in theoretical frameworks and international area are identified. Then, the cultural rights of Kurdish people in Turkey and the Basque people in Spain are evaluated in the light of these interpretations. Lastly, the identification of cultural rights and the illustrations are discussed with regards to communitarian and cosmopolitan ethics, and it is indicated that neither communitarianism nor cosmopolitanism can solely be adequate for the ethical interpretation of cultural rights, eclectic as a method would be beneficial for understanding complex nature of culture.

Key words: Cultural rights; Basque culture; Kurdish Culture; Communitarian Ethics; Cosmopolitan Ethics.

Kültürel Hakların Karmařık Doğası: Karřıt Etik Yorumlar
Kürtler ve Basklar

Özet

Bu makale, kültürel hakların karmařık doğasını genel bir bağlamda karřıt etik yorumları sunarak açıklayacaktır. Bu ikileme başa çıkmak için, çalışmada kültürün sorunları ve tartışmaları ve teorik çerçeveler ile uluslararası alanda kültürel haklar tanımlanmaya çalışılacaktır. Bu bağlamda örnek çözümleme olarak Türkiye'deki Kürtlerin ve İspanya'daki Bask halkının kültürel hakları kültürel haklar, insan hakları ve etik çerçeveler ışığında değerlendirilecektir. Son olarak, kültürel hakların tanımlanması ve illüstrasyonlar, komüniter ve kozmopolit etiğe ilişkin olarak bir tartışma ortaya koyulacaktır. Bununla birlikte ne komüniter ne de kozmopolitliğin kültürün karmařık doğası sebebiyle kültürel hakların etik olarak yorumlanabilmesi için yeterli olamayacağı, bir yöntem olarak eklektik anlayışın yararlı olacağı savunulacaktır.

Anahtar kelimeler: Kültürel haklar; Bask kültürü; Kürt kültürü; Komünist Etik; Kozmopolit Etik.

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Introduction

Human rights one of the controversial spheres of the ethics, since the universality of human rights have been questioned especially on the basis of cultural relativity principle of sociology. However, cultural rights bring much more discussion than human rights in general due to implying the rights of group instead of individuals. Significantly, the promotion of cultural rights illustrated with ethnic conflict, nationalism and violence in some cases. Yet, it is obvious that cultural rights are essential because of preserving languages, traditions, values and beliefs as cultural heritage.

To begin with, the culture can be defined as problematic issue according to describing models. There are two fundamental opposing examples. One was the Ellis Island in which Italians and Jews maintained their own culture separately with regards to their particular beliefs, rituals, and traditions. Another illustration have been experiencing in the United States. Basically, the diminishing cultural differences of various cultures, including religious, ethnic and identity difference are remarkable in America, and these varieties have been replaced by language, Hollywood movies, media and same consumer behaviors. So, what should be the model for the ethical interpretation of culture? (Appiah: 2005; 114-120)

There is a widespread debate between individualism and public good about culture. However, cultural rights had regarded as subordinated subject until the United Nations Human Rights Commission in 2002. Nevertheless, as McGoldrick (2009) indicated the request about cultural diversity couldn't be solved by Secretary General in 2005. The discussion of culture within human rights had reflected to Vienna Declaration on Human Rights, and followed by the European Convention on Human Rights. Significantly, the multi-culturalism and cultural diversity are becoming increasingly popular. The feminist critique and the rights of minority cultures are other reactions to the Universal Declaration of Human Rights. (McGoldrick: 2009; 447-449)

1.1. Cultural Diversity

The problematization of the cultural diversity can be observed in the ethics of immigration. To illustrate, the family reunification policies of states are determined by their culture. As Carens (2009) mentioned, the value of foster child and the definition of primary family shape

the main components of particular cultures which are differentiating from each other. In other words, the condition of adopted children, minor children and parents are variable factor of culture in the admittance of family reunification. However, all these issues imply the decision of state. In order to evaluate cultural rights, the treatments need be handled in international level. (Carens: 2009; 98)

The fundamental problems of cultural rights can be summarized under five main titles with respect to McGoldrick's (2009) model. First problem refer to the differentiating culture from other social aspects like religion. For example, it is hard to decide whether headscarves belong to culture or religion. Second debate arise form the possibility of essentialization of culture, and disregarding multiple cultures. (McGoldrick: 2009; 450) Actually, the problematization of the essentialization is similar to orientalism concept defined by Edward Said.

1.2. International Instruments

Third discussion can be defined as the dynamic nature of culture as well as the communitarian character of culture. The possible solution could be identifying specific rights in terms of expression, religion and minority rights. Another problem is the limits of cultural rights according to quality and quantity in international area. Both the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights couldn't cover adequately majority as a result of the overstatement of rights of minority and indigenous people. Lastly, it should be indicated that cultural rights need to be stressed in theoretical frameworks. (McGoldrick: 2009; 450-52)

Another tension was regarded between article 15 of ICESCR which promotes cultural rights and article 27(2) of UDHR supporting intellectual property rights. This is caused by that intellectual property rights are considered as the expression of dominated Western culture and capitalism. Yet, the distinctions between them have been organized within ESC rights. Basically, ICESR supported the reflection of cultural rights to media, art, development and diffusion of culture. (McGoldrick: 2009; 253-56)

On the other and, UNESCO provided much more attention to cultural diversity principle by emphasizing the impact of globalization to culture and 'cultural vulnerability'. Particularly,

this was provided by the Convention on the Protection and Promotion of the Diversity of Cultural Expression. As McGoldrick (2009) explained, 148 countries adopted this convention; however, US opposed the convention. This treatment of the US can be identified according to delineating culture as individualistic rights and property rights and property rights rather than human rights.

Israel was another country which rejected the convention. Yet, Japan, the Republic of Korea and Mexico approved the convention by contradicting with some articles. The significance of convention refers to the evaluation of cultural diversity as a public good in international context. Nevertheless, it couldn't be counted as the human rights treaty. Moreover, international cooperation has been stressed as well as cultural diversity in the convention. (McGoldrick: 2009; 458)

The roles of international instruments are essential for understanding cultural rights as it is mentioned above. But, the case studies are key point for ethical comprehension of cultural rights. The cultural rights of Kurdish people can be pointed as an example. Argun (1999) suggested universalism instead of particular cultural rights as a solution in Turkey. Argun (1999) criticized the imposition of common good to Turkish society. There various perspectives pointing the roots of Kurdish nationalism in Turkey. Islamists blame Kemalism, nation-state and modernity for separating religious tie between Kurds and Turks. However, another approach concentrates on 'historical contingency and circumstances'. (Argun: 1999; 87)

Argun (1999) utilized the conceptualization of Habermas in order to identify Kurdish problem. Basically, Habermas defended that life world, in which culture is reproduced, should be protected from the system referring to material life for the purpose of reaching ideal situation. However, as a counter argument, Arendt claimed that multiculturalism of carrying ethnic differences to public space should be avoided due to the threat of authoritarianism. Although their public space and public sphere resemble each other, the roles of cultural and ethnic differences are controversial topics.

From other perspective, the Turkishness conceptualization has reflected to public space in Turkey by contradicting ideal situation of Arendt. Argun (1999) declared that constrains of the universality is not solely related to 'the unity and indivisibility of Turkey', but also the

problematic delineation of Turkishness need to be issued. In addition, Argun (1999) is critical about the explanation of Kurdish problem only with regional economic differences, PKK separatist movements and ‘Serve Syndrome’. (Argun: 1999; 89)

There are two fundamental claims against the non-recognition of identity. First one is linked to the being compatible with the universal legal rights including the preservation of people by disregarding their gender, race and etc. Yet, the counter argument is related to the ban of cultural identity by state such as education and language. Argun (1999) defined this situation as totally illiberal. Second claim is the civic citizenship in Turkey that have been highly criticized. As Argun (1999) mentioned Article 66 of Turkish constitution identified citizenship with these words: ‘Everyone who is connected to Turkish State by citizenship ties is a Turk.’ (Argun: 1999; 90)

At this point, it should be mentioned that nation and citizenship doesn’t necessarily correspond each other as in the case of French citizenship. According to Argun (1999), conceptualization of Turkishness has been experiencing the tension between French civic citizenship and German romanticism which have ethnic elements. Specifically, the Turk ethnicity was utilized by ultranationalists against leftists during 1960s and 1970s. Also, republicanism and the notion of public good are influential in the occurrence Turkishness. Argun (1999) defended that the republicanism was suitable for early stages of Turkey because of the transition from empire to nation state. But, she offered the need for transforming ‘unitary doctrine’ of Michael Walzer to public sphere. (Argun: 1999; 92)

One of the main debates of communitarian approach is then existence of culture in human rights because of demanding cultural substance as well as basic rights. Namely, as Argun (1999) indicated, they describe group identity as primary good. Second main argument of communitarianism is about the discussion of state neutrality. In other words, state can’t manage to stand as ‘culturally neutral’ with respect to communitarian approach. (Argun: 1999; 93)

Another significant claim of Argun (1999) is about indirect discrimination within Turkish law. Specifically, Article 8 of Anti-Terror Law is important, since it is blamed for constraining freedom of expression with penalizing ‘propaganda against the state’s indivisibility.’ (Argun: 1999; 96) Similarly, Article 301 on Turkish Penal Code have been

debatable because of the freedom of expression. Yet, it had covered in 2008 by allowing the intention of criticism. Besides, there have various revisions in Turkish law including the abolishment of the ban about broadcasting in Kurdish language. This has recently reflected to public area with broadcasting or TRT ŞEŞ.

According to Yavuz (2001), major alterations are necessary: “Turkey need to recognize cultural rights of Kurds by lifting the ban on Kurdish broadcasting, allowing education in Kurdish, and forming a pro-Kurdish political party.” (p.17) However, current changes in the law of YOK provide university education for Kurdish language in the name of providing continuation of living languages in Anatolia. Nevertheless, education in Kurdish language is still banned. Moreover, the usage of other languages in public sphere in public sphere has been illegal since 1982 constitution in Turkey.

Argun (1999) suggested the universality as solution with the problematization of Turkishness. On the other part, Yavuz (2001) illustrated Islam as common identity of Turks and Kurds. Furthermore, Yavuz (2001) defended that Islam could formulate ethnic policies, and he identified the collapse of Ottoman Empire as starting point of Kurdish problem in Turkey. Also, Yavuz (2001) pointed the EU as intermediary mechanism for the solution by stressing the importance of EU membership for Turkey. (Yavuz: 2001; 21, 22) Nevertheless, it should be remembered that cultural rights of minorities have been controversial in Europe especially since 1989.

The fundamental tension arises between protection and ethical consideration. The essential discourse refers to national minority rights. Malloy (2005) delineated the tension:

Protection refers to the responsibility of the state to protect individuals against injury committed either by the state or third parties and thus also implies the right to humanitarian intervention on behalf of citizens belonging to a state. Ethical consideration refers to the act of moral and social recognition of constitutive communities.” (Malloy: 2005; 16)

In addition, Malloy (2005) defined national minorities as ‘autochthonous.’ This autochthonous status is not solely refers to Turks in Balkans or Hungarians in Slovakia, but also it includes ‘the Bretons in France and the Catalans in Spain’. (Malloy: 2005; 22) In order to deal with cultural rights of Basque people as second case study, they need to be specified, Particularly,

‘The Basques are culturally and linguistically distinct people who live in northern Spain and southwestern France.’ (Martin: 2006; 167)

The history of Spain and the cultural oppressions are very important in order to comprehend rise of ETA as a terrorist group. Especially, the dictatorship of Francis Franco determined the oppression over the Basque culture with the integration of the region as well as banning their language. Thus, these oppressions lead to the rise of ETA in late 1950s with the demand of national identity and liberty. (Martin: 2006; 94)

In terms of the declarations of ETA, it represents and preserves distinct culture of Basques; however; they demand self-determination as a result of this cultural background. (Roach: 2005; 119) Unfortunately, the bloody actions of ETA couldn’t be solved with the consideration of Basques as autonomous community in 1978. Yet, it managed to decrease nationalism in the long run. (Roach: 2005; 124-126)

Although the Basque nationalism have main distinctions from Kurdish nationalism such as political formation of Spain and ceasefires of ETA, it is important to deal with this case study in order to suggest solutions for Turkey. Significantly, EU outdistanced presumption of liberation of Basque country as a result of common currency and transformation towards internationalism of EU. Furthermore, the role of the recognition of ETA as a terrorist group by EU and the impact of September 11 shouldn’t be neglected. (Shephard: 2002; 13, 14)

In order to deal discuss and combine all these knowledge in the last part, the categorization of interpretations about cultural rights as cosmopolitan and communitarian would be useful. Basically, cosmopolitan regard individuals in the center of analysis and morality with rule based strategy. Therefore, cultural diversity principle and individualism can be summarized under cosmopolitanism. In contrast, communitarians regard state as main actor, and they identify morality with respect to territorial boundaries with an end based strategy. Thus, the argumentations including public good can be titled under the communitarian approach.

McGoldrick’s problematization of cultural rights could be utilized for these two opposing interpretations. For instance, the dynamic nature and the ambiguity of culture prepare ground for communitarian approach. Although the attitude of McGoldrick represents cosmopolitanism rather than communitarianism, these two problems can be counted argument s for cultural

rights by emphasizing their uncertain nature. However, in my point of view, the evaluation of the society require considering these dynamics and sophisticated conceptualizations. Yet, the other problem, mentioned by Goldrick, implies the lack of cosmopolitan approach in international area In other words, essentialization of culture, limitations is legal and theoretical frameworks represent the absence of emphasis on individualism.

Discussion and Conclusion

Despite the fact that 148 countries approved the convention on preservation of cultural rights, this doesn't illustrate their individualistic perspective. The only interference can be obvious communitarian approach of the US with the rejection of the convention. Specifically, UNESCO supported cosmopolitanism for the sake of cultural rights by including the impact of globalization. In addition, the limits of cultural rights prove the widespread communitarian perspective about culture in international area. Besides, the rise of globalization requires not only the protection of minority cultures, but also major cultures are in question. At this point, vulnerability of culture is very essential that can be distorted by assimilation and revolution as well the promotion of dominant culture by states.

The strongest argumentation of communitarian approach arises from the case studies. The threat of divisibility and territorial boundaries with terrorist attacks shows the roots of reactions against cultural rights. This can be explained by the existing realist principles within IR. The legal framework and international instruments could contribute cultural rights, but they are not adequate for organizing all actors. Another essential point is validity of cultural relativity principle for both states and groups. In other words, the Turkishness should be interpreted in terms of the historical background and values, and constitutions should be evaluated in terms of the conditions of different period in Turkey.

From other perspective, the ethical evaluation of vulnerable topic needs the elements of cosmopolitan approach. For instance, Argun managed to point the influence of ultra nationalism over the emphasis of Turkish ethnicity. Moreover, communitarianism can be criticized for the grounds of defining public good as primary and impossibility of state neutrality. However, Argun's argumentation neglected significant points of Kurdish problem with subjective perspective. To illustrate, the concerns about territorial sovereignty shouldn't be identified as 'Serve Syndrome.' Furthermore, she ignored the impacts of regional economic

differences in Turkey. That represents missing the importance of class conflict and the effects of capitalism, and their negative impact over Kurdish problem.

Another critique about the article of Argun could be about the indirect discrimination of Turkish law. Particularly, article 8 of Anti-Terror Law shouldn't be included in the discourse of discrimination. Also, the tension between protection and ethical consideration is valid in Turkey as well as Europe. The geostrategic position of Turkey increases the will of protection. These arguments explain the overwhelming communitarian perspectives in Turkey. The main problem is caused by the discriminative ideologies instead of legal frameworks. Thus, cosmopolitanism should point the ideologies promoting ethnic nationalism rather than description of civic citizenship.

The definition of Islam as common identity refers another problematic discourse which is utilized by Yavuz. Although postmodernist perspective approves the existence of religion in society in constructive meaning, the ideal situation should be formed according to secular grounds. However, the impact of the EU over Basque nationalism is compatible with his solutions to Turkey. In the light of all these knowledge, the case studies represented the need for combination of the opposing approaches. Communitarianism doesn't offer improvements for cultural rights. Yet, cosmopolitanism draws idealistic picture by disregarding realist principle of IR. Thus, the end based strategy and rule based strategy should be utilized interchangeably. The opposing ideologies and theoretical frameworks can be issued as the fundamental obstacle against cultural rights.

In conclusion, the fundamental step needs to be realizing the importance of culture with the purpose of avoiding the subordination. Then, it would be possible to celebrate varieties by respecting sovereign rights of states. That requires the belief of 'the possibility of state neutrality' as well as the acceptance of vulnerability of culture. Besides, the cosmopolitan approach should be developed in both international area and within states. Namely, cultural rights can be flourished with cosmopolitan approach by being compatible with communitarian principles, and this entails high level of consensus. Furthermore, the misinterpretations in academic studies led by the fact that both cosmopolitanism and communitarianism respect distinct ideas in the opposite sides of spectrum. As it is mentioned, culture is dynamic and ambiguous. Hence, it can't be evaluated in terms of rigid conceptualizations. Lastly, the role of culture for the development of humankind can be expressed with this quotation of Andre

Malraux: “Culture is the sum of all forms of art, of love and of thought which, in coarse or centuries, have enabled man to be less enslaved.”

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