

Podcast Series 3 - Reimagining politics through human rights

Episode 2 - Reimagining values: culture as politics

Alexandra Xanthaki

Hi, this is To The Righthouse, a new podcast series by the Global Campus of Human Rights. From scepticism to hope, from utopia to empathy, we discuss human rights, riding waves, but also signalling where the light is. This podcast was recorded in Venice, Italy, on the island of Lido at the Global Campus headquarters.

Graham Finlay (GF): Hello from the podcast To the Righthouse produced by the Global Campus of Human Rights. I am Graham Finley and I'm one of the hosts of our new series 'Reimagining politics through human rights'. In this episode I am lucky enough to talk to Alexandra Xanthaki, the UN Special Rapporteur in the field of cultural rights. Alexandra and I will focus on 'Reimagining values: culture as politics'. But first, a warm welcome to you, Alexandra.

Alexandra Xanthaki (AX): Thank you very much, lovely to be here.

(GF): Well, we're really keen to talk to you because you're doing so much work in this area, an area which - I hope it's not unfair to say - has been maybe neglected by the mainstream of human rights, or even seen as in conflict with the mainstream of human rights. And culture is such a big concept, but one which might need some defining. So, what role do you think there is for culture and cultural rights and reimagining politics? Is there a cultural politics?

(AX): So, you're absolutely right. I often say that cultural rights are the Cinderella of human rights, if you... and my role is to get Cinderella to the ball. But I have my staff at the United Nations that tell me that actually my role is to change the ball, so Cinderella to change the ball. So this is our aim. When we talk about culture, we talk about ways of life. And this means...so, cultural rights are rights to continue to have our ways of life, our priorities, our cosmo theories, our visions, and our philosophies etc.. In this respect, cultural rights and cultures are at the very centre of politics because cultural rights and cultures have to do with the right to have one's vision reflected or contributed to shaping the society. So I would say that cultural rights and cultures are indeed central.

(GF): I suppose when we're talking about minorities, we're talking about cultural rights which could be under threat from politics; and in multicultural societies, which probably includes most of them, how do we safeguard the dignity of minorities and underrepresented groups? And another question is: do underrepresented groups have their own culture? So, I'm thinking about not specifically cultural groups but say LGBT community members, or perhaps you might say ethnic members, or women or things like that.

(AX): So, everyone of us has a different version of cultures. So that's why international human rights law recognises the right of everyone to participate in the political - sorry - in the cultural life of the society where they are, but also to maintain and develop their own culture. And listen, I'm Greek and if you ask me what my Greek culture is, I'm going to give you a very different answer to if you ask the next Greek what the

Greek culture is all about. So cultures, first of all, are not uniform but also, within cultures, there are a lot of groups that are not uniform but they take different things. In general, however, we see that communities - whether they're majorities or minorities, whether they're ethnic communities or other kinds of communities - they do develop gradually their own cultures. In international law, international law mainly protects or at least directly protects the cultures of ethnic, or religious linguistic, or religious minorities. Certainly these cultures have to be protected, and when we say protected, we mean protected with additional positive measures, which states sometimes forget. However, also, when we talk about LGBT persons, when we talk about older persons, when we talk about the youth, there are parts of cultures that these groups develop more, and these elements also have to be protected. Now, whether we're going to talk about self-sustained, autonomous cultural frameworks, I think it's just a theoretical question. But definitely the elements that we see that are developed in the LGBT communities or in the youth have to be protected as well.

So I think that everybody's cultural frameworks have to be protected, but additionally the underrepresented groups. And you asked me what relation this has with politics, and I think it has a very clear relationship, because the way I read cultural rights and the way I fight for cultural rights, under my capacity as the UN Special Rapporteur in the field of cultural rights, is the right to participate, the right of participation. So I think that what is really important is that underrepresented communities have the space and the ability to participate with their cultural frameworks in the national, the regional, or the international cultural framework, and also have the right - so a duality - also have a right to maintain and develop their own cultures. So this participation element goes very much towards the political sphere, and the political substance within the nation, the nation state.

(GF): I think that's really helpful, because it suggests that cultural rights are beyond non-discrimination, but extend to really living your culture. I could see there being a tension between non-discrimination and participation which is, I think, probably the kind of thing which has always been raised whenever people talk about cultural rights and the rights of minorities, which is the effect of a particular culture on particular members of that culture, people who are identified as being members of that culture, in terms of discriminatory practices, or even maybe quite harmful practices. How do you think the international system or even regional systems should navigate that problem?

(AX): Yes, I think this is indeed one of the main questions, and unfortunately I think that this question has become so big in people's minds that it has become the main reference at times, the main context to the concept of culture; and this means that culture in many circles has been seen, and to a degree it is still seen, as an obstacle to the realisation of human rights. So, you know, from seeing culture as this transformational concept that empowers everyone to do exactly what they feel their identity kind of suggests they should do, culture is being seen as this obstacle to actually maintaining their human rights. This is based on the truth; I mean, there have been occasions, there are occasions, where cultural practices go against human rights, but first of all, I think that they're not as often as we would like to pretend, and especially as states - who don't want to have more obligations concerning cultural rights - emphasise. And secondly, and maybe more importantly, is that we should not have this debate only with respect to minorities, so we don't see undemocratic or unjustified restrictions based on cultures, or in the name of culture, in minority groups, we also see them in majority groups.

So, as I told you, I am Greek. I grew up in Greece, and this idea that people in Europe say that suddenly we should have migrants adopt - quote - 'our ways of life' that have to do with human rights is quite...I'm quite

bemused by it, because when I was growing up, there were a lot of places in Greece and in other parts of the world that...women have not achieved equality. So, suddenly to say that it is the cultural practices of the minorities or of the indigenous peoples that harm human rights is quite limiting. And also, I have to say, my cynical self also feels that it is quite... It is a pattern that continues to be pushed by states that, as I said, want to avoid accepting the legal obligations that signing and ratifying the international human rights instruments entail. So, by saying that 'of course we recognise cultural rights but, look, you know, when you have to deal with minorities violating human rights we have to make sure that we don't give power to these minorities', you dehumanise minorities, and then you dehumanise migrants, and then it's easy to actually restrict their human rights as a state. So I think that we should be very careful not to allow this argument, that has indeed seeds of truth, to overtake the reality of the transformational empowering aspect of cultural rights. And at the same time, I think we should indeed look out for violations of individual rights in the name of culture. And these unfortunately still happen.

International law does have the tools to deal with these conflicts - when we are diplomatically saying the balancing between the two, but really you're right, we're talking about conflicts. And international human rights law has said, for example in the [Lovelace case](#), the Human Rights Committee has said that the restrictions of human rights have to be reasonable, have to be proportionate, and also have to ensure that the core of each right is maintained. So we do have the tools, and we do have rights and interests fighting which one to prevail all the time, in the public arena, and this is why lawyers have a job to do, very often. And the law does give us the tool to find ways out of this.

(GF): I think that's really helpful because it allows us to navigate these difficulties using the familiar tools of human rights law. You've also said derogability, or the absence of it, is often another way to decide what actions or what practices really must not be allowed, and which ones should be a possible basis of a cultural rights claim.

(AX): So for example, at the moment I am working and I am writing a report on the right to participate in sports, and we have very specific cases in France where the French state has prohibited athletes from participating with wearing the hijab. And they haven't explained why, but I think it's pretty obvious that they're doing it in the name of this, you know, of gender equality. But the outcome is that female, strong athletes cannot really freely exercise their right to culture, which is participating in sports, because of what the elite mainstream French society feels is limiting to women, to gender equality. They haven't asked these women whether they wear the headscarf in order to be submissive, they haven't taken these women's views into account at all. And they're just limiting their rights. So, this is what I mean, this is a very clear example of how this very western, one-sided - do you want to say colonial? - understanding of human rights and understanding of cultures that completely ignores and neglects the participation of the actual interested groups within minorities harms human rights, rather than helps human rights.

(GF): And again, it seems like a very good case of something you've written about more generally, which is the use of universalism as a bully - in one of your famous phrases - to buy states to achieve goals which do not seem necessarily like they're grounded in universal human rights.

(AX): Exactly. And I think that when we talk about violations of human rights, we should really ask these women. So there is a well-known case, [S.A.S. case against France](#), before the European Court of Human Rights, and there was this woman who was wearing the full hijab and was saying that the reason - very eloquent, very well-educated woman - and was saying that: 'the reason why I'm doing this is because some

days I want to be closer to my God, and some days I don't want to be closer to my God.' And I think that there is a debate to be had about, you know, who participates, who is at the table when the decision on whether a practice violates human rights or not is taken, by whom is this decision going to be taken. And I think that if the women - because usually it's the women - if the women or other marginalised groups such as children, or sometimes LGBT individuals, if these groups are not at the table, then we treat them as if they have less human agency than we do. So we treat them as children, and actually, you know, we disempower them. And I think this is my argument, but my argument should not be used to push for illiberal cultural practices in the name of culture. So, I was in Chile, on an official visit only last week, and I visited Rapa Nui - Rapa Nui, Easter Island. And there I realised that allowing girls to have sex at nine, nine years old, was justified by the chairman of the elders as being part of the culture. Okay, this is not part of the culture, torture can never be justified in the name of the culture, and in these cases we have to be brave and we have to say very clearly that it is a violation of human rights. But listen to that: in Rapa Nui, it was the Rapa Nui women themselves who actually went to the court and who said: 'No, this is not a practice that should continue in the name of culture.' So you have the women themselves, who empowered themselves and went and sorted out an illiberal cultural practice. I was... I was delighted to hear the story.

(GF): I mean, it's an awful example but an excellent one in terms of showing, I think, something about, again, the politics of cultural rights.

(AX): Indeed.

(GF): I'm very struck by the process aspects of human rights promotion or protection which are getting increasing attention: transparency, accountability and participation. And I think, while it's difficult to bring these norms to human rights promotion, I think participation is the most important. And I know you've written quite eloquently about some of this, which I think can inform the politics. First of all, I really liked the way you deployed a non-derogable right like the right not to be tortured as a way of understanding what was wrong with that particular cultural appeal, but also how it can be connected to participation. And like I said, you've written eloquently about the role of subsidiarity in terms of certain kinds of cultural rights and participation in politics.

(AX): Yes, indeed, I think that when... thank you... I think that I'm not sure about how eloquent this (is) but I am sure that definitely, until now, very often, the people whose rights the state is supposed to protect in limiting cultural rights have not had a say on whether these cultural practices either represent them or should be eliminated or violate their rights and to which extent. And I think that it is very important if we do want to move away from a very eurocentric understanding of international human rights law: first of all, to give a place, the main place at the table to these people, to listen carefully to what these people say. And I think also - I will make a more general point - giving cultural rights a place at the table. So at the moment, very often when I go around and I talk about artistic freedom, states focus on artistic freedom as the right to expression. So it seems that civil and political rights - the right to expression, right to association - are still unfortunately seen as the core of human rights, even though the states do say, do talk about the interdependence of human rights, even though states do say that there should be no hierarchy in human rights; but at the end of the day, this is what they do. So for example, Norway, you know, has published a report, an excellent report, and it's providing a lot of help to the human rights system, but a lot of help about artistic freedom as a part of freedom of expression. But if we define artistic freedom as freedom of expression, then we leave aside all the creativity, all the innovation, all the link to the psyche of everyone that culture includes. So I think that it is very important to focus more on cultural rights.

(GF): I think that's very helpful, because not only does it redirect our gaze, I think, to other buildings, and their... to buildings, institutions, to even intangible goods like community or fellowship; and again, I'm using religious examples but we could also do the same for cultural practices, for dance, for festivals, for sport, as you say, and away from individual artworks. And I was really struck by how that approach to human rights and to freedom of expression and art really reflects a very narrow and specific form of politics, but also a narrow and specific form of art.

(AX): Indeed. I think that culture has been defined, and is still being defined, very much as either - would we say? - the high arts, fine arts, etc. or cultural heritage. And it's very interesting that when we talk about minorities we refer to cultures, but when we talk about majorities - especially western majorities - we refer to the arts. So art is supposed to be the highbrow one, culture is about just to be only for minorities. So we still make this distinction. And I think that also within arts, which art as a state you're going to promote and you're going to help. So I've seen some amazing - I mean, you know, you're Irish, you know that - the amazing murals, the states: is this a form of art? Of course it is! You know, graffiti, rap music. All these are new forms of art that many states do not really protect, street art, street dance. And I think that this democratisation of culture is important, and this is what I find central in my role.

(GF): Well, I think that's a really good transition to what I think is my last question - and in a way you suggested, I think, some of the answers to it - but people might still be leery about the conflictual aspect of - maybe I'm not going to say your vision but - this vision of culture as politics or politics as culture. I mean, to what extent do these kinds of forms of self-expression and movements and the interactions between cultures involve political contestation and conflict? And do you think that there's still - or how do we overcome if it is, does exist - a fear of culturally-based politics, or the politics of cultural political groups?

(AX): Yes. Yes, I think that this is indeed a fear that we have, and more and more we see - but we always, this was always the case - we see states that use very specific cultural frameworks as the one framework that they have. I wonder whether in this respect, this idea of secularism has been a boomerang, because when we talk about 'all the state should be neutral' is a little bit in the abstract. The state is never neutral because the state, the society, always favours the leading, the mainstream parts. So, in trying to ensure that the state is neutral, I think that we encourage the continuation of the status quo and of one specific culture. So in this respect, I wonder whether it is better to say: 'you know what, let's leave secularism and let's adopt pluralism and the plurality of cultures even in the public sphere.' But let's also say that, you know, cultures and cultural frameworks are of equal value. So if we agree that cultural frameworks are indeed of equal value, then they can be in the public sphere, but as long as they do not violate other human rights to the point that the people themselves feel they violate human rights. So I think that it is more... better for democracy and better for pluralism if we actually allow cultural allegiances to exist in the public sphere, but not... and as a way to avoid the one culture and the one cultural framework that the state very often favours.

(GF): In this pluralist sort of form of society, is there a need for - as it were - special measures to support cultural minorities and underrepresented groups just because of the dominance, the dominating aspects of the dominant culture, the majority culture?

(AX): There is no doubt that there is an absolute need, can I be more forthcoming? So there is no doubt that there is a need for special measures in order to ensure that substantive equality is achieved. The reality

is that, as I said, in the public sphere the louder voices, the voices that are more in the mainstream, the voices that have more solid background are heard more, and they help decide on the vision of the society. And the more they decide on the vision of the society, the more minorities and the wider voices are lost and are pushed aside and are marginalised.

So in this respect, yes, we do need positive measures. And actually the states have in their overwhelming majority have signed and ratified instruments that say that there must be positive (measures). So for example, the Convention on the Elimination of All Forms of Racial Discrimination, so very clearly says that there should be positive special measures; for indigenous peoples, the Declaration on the Rights of Indigenous Peoples very clearly says that there should be positive measures. So I am very much in favour of positive measures. However, the type of positive measures is important, because certain positive measures can bring further tensions and can limit the rights of minorities in practice, whereas certain further measures, especially with a campaign that informs people why these measures are being taken, do exactly what we want them to do.

In this respect, I think that the media at the moment and public campaigns are extremely important. We see a lot of disinformation and we see a lot of misinformation. And the states have to take... have to engage in campaigns in order to educate people. We see the dehumanisation of minorities. Oh my God, the dehumanisation of refugees and migrants, very much so, in all parts of the world. And the dehumanisation of (the) other - you know trans people are dehumanised. So I think that it is not just the opportunity, it is the obligation of states to have campaigns to educate people, so that these sections of the population are not dehumanised.

(GF): Well, that's a lesson for all of our listeners. And I know they're grateful and I'm grateful for you to take your time to talk to us today. Thank you so much, Professor Xanthaki and thank you to all of our listeners for listening.

(AX): Thank you so much. Thank you.