

HUMAN RIGHTS IN INTERNATIONAL RELATIONS

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*CROSS-REFERENCE: civil society-transnational, ethics, genocide, governance-global, human rights-comparative, indigenous peoples' rights, international regimes, international law, intervention-humanitarian, normative theory, rights, rule of law, sovereignty

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Human rights is the soul of politics. The essence of human rights is the idea that all persons possess equal moral worth, that social order exists to preserve the essential humanity of its members, and that therefore the exercise of all forms of political authority is properly bounded by its impact on fundamental human dignity. In contemporary international society, this norm has become the theoretical basis for the legitimacy of all states--albeit poorly realized in practice. The emergence of the principle and practice of human rights is an essential area of international law, a hallmark of global civil society, and a response to the multi-layered challenges of globalization, along with the persistence of state abuse. The politics of human rights also provides a fascinating test of the power of transnational citizen action and international cooperation to sporadically transform state sovereignty. This essay will trace the evolution of this emerging norm, chart some systematic patterns of violation, assess the range of international remedies, and discuss challenges to the concept and its application.

Historical development and emerging consensus

While most cultures have had some historic standard of humane treatment for their members, the notion of universal and natural rights rises with modernity and increasing interactions across borders. Early arguments by Spanish theologian Bartolome de las Casas to recognize the essential humanity of the Indians of the Americas culminate several centuries later in the trans-Atlantic movement against the African slave trade which secured its abolition. During the 19th century, growing costly collisions among rising European powers led to recognition of the horrors of war as a violation of universal standards, the establishment of the International Committee of the Red Cross, and the drafting of a series of codes of conduct for the treatment of civilians and prisoners: the Geneva Conventions (four treaties developed between 1864-1949). Meanwhile, new types of democratic regimes based on citizenship and social contract inscribed the protection of life and liberty as a requisite of rule within the state, later exported. The British Magna Carta lays a foundation in limiting the sovereign's powers of coercion, France's Universal Declaration of the Rights of Man and the Citizen asserts rights that transcend social class and condition, while the American Constitution's Bill of Rights establishes a normative hierarchy in which fundamental rights supersede even democratic popular will.

The contemporary international human rights regime was established in reaction to the horrors of the Holocaust-- the first modern-era genocide committed by modern means within Europe, and coupled with border-crossing war crimes and international aggression. The Universal Declaration of Human Rights, signed on December 10, 1948, is widely considered to mark the birth of the modern norm of international human rights. Over the following decades, a global architecture was constructed, consisting of an expanding body of international law, global and regional monitoring and sanctioning institutions, an emerging practice of humanitarian intervention, humanitarian and governance foreign assistance, and a growing global network of human rights movements. Jack Donnelly has calculated that over 140 states now subscribe to the foundational documents that delimit human rights in theory: the Universal Declaration and two International Covenants.

While human rights began as a legal defense of the lives and physical integrity of political dissidents and religious or ethnic minorities from the malfeasance of dictatorships, its mandate has expanded in claims, subjects, and mechanisms. During the Cold War, the Western bloc sought to globalize civil and political rights via the International Covenant on Civil and Political Rights, while the socialist states emphasized social rights such as education and health care under the International Covenant on Economic, Social, and Cultural Rights. Meanwhile, developing nations added to the canon a concern with collective rights of development, identity--and eventually, attempts to secure accountability of non-state actors like multi-national corporations for abuses connected with globalization. From decolonization onwards, the increasing presence of non-Western states in international society brought diverse calls for expansion of the human rights agenda to socially marginalized as well as politically oppressed groups, attention to government negligence as well as repression, and culturally-based critiques of the liberal norms. Since the 1990's, the claims and subjects of human rights have been expanded to previously unrecognized groups such as children and indigenous peoples. Islamic and Confucian cultural critiques of the liberal Western basis of human rights were largely transcended at the global level at the 1993 United Nations' Vienna Conference on Human Rights, that declared a consensus that human rights are "universal, indivisible, and interdependent" (although such challenges reappear regularly in selected states' defenses against international criticism). By the twenty-first century, international human rights enforcement mechanisms had been strengthened significantly--but only in the core domain of massive and systematic violations of life and liberty by government action of pariah states.

Defining rights, setting standards

Like other forms of international law, human rights standards are a mélange of explicit treaties, customary international law, pilot domestic standards, and scholarly interpretation. For example, in assessing Spain's 1998 request for the extradition of former Chilean dictator Augusto Pinochet from Britain to face charges of crimes against

humanity, a British court considered its obligations under the Convention Against Torture, the European Court of Human Rights, Chile's own amnesty and claims of sovereignty, British legislation, and expert testimony. The Universal Declaration and twin International Covenants are considered to encompass a comprehensive foundation, with more specific standards and jurisdiction developed by the more widely-subscribed phenomenon-based treaties: the Geneva Conventions on war crimes, Convention Against Torture, Genocide Treaty, and Convention for the Elimination of Racial Discrimination. Another set of treaties are linked to vulnerable populations; they establish valuable benchmarks and monitoring obligations, but are less widely accepted and less effective sources of pressure on states: the Convention on the Elimination of Discrimination Against Women, Convention on the Rights of the Child, and Refugee Convention. The most recent 21st-century international norms, the Universal Declaration on the Rights of Indigenous Peoples and U.N. Convention on the Rights of Persons with Disability, establish new populations of international concern but still struggle for broad recognition.

The conceptual core of human rights standards is to provide protection and empowerment against evolving threats to human dignity. To meet this mandate, fundamental human rights must be universal and inalienable--immune from contingent variations in geography and political conditions. Such rights must be enforced by the international system: that provides a safety net for uneven citizenship regimes, incorporates increasing numbers of displaced persons and non-citizens, and acts to check rogue states. But international rights are also meaningless without international duties. In this sense, the key emerging debate on enforcement is the Responsibility to Protect doctrine (approved by the United Nations in 2005), which proposes a broad but important obligation on member states to act collectively where the state cannot or will not, in cases of massive and gross violations of fundamental rights.

Patterns of abuse

If human rights violations are a form of political pathology, the search for a remedy begins with study of the symptoms and analysis of the causes. The study of patterns of abuse has become a sub-field of international relations and several social sciences. Violations can be measured and monitored by a combination of testimonies of survivors and witnesses, government records, country case studies, statistical patterns of demographic records and potential correlations with determinants of abuse, and forensic anthropology of gravesites.

War crimes such as massacres of civilians and torture of prisoners of war are often associated with counter-insurgency struggles and participation of paramilitary forces on both sides, which comprise an increasing proportion of conflicts. While state-sponsored slavery was almost eliminated by the twentieth-century through international cooperation, state-tolerated forced labor by private parties along with associated trafficking in persons has actually increased in the twenty-first, in tandem with the pressures of globalization.

Genocide, the attempt to systematically eliminate a population defined by identity characteristics, has also experienced a lamentable revival in the aftermath of the Cold War. Genocide is associated with recent defeat in international war, the collapse of hegemonic influence, and competitive political mobilization by "ethnic entrepreneurs"--and can rarely be attributed primarily to "ancient hatreds." Moreover, mass expulsions of "ethnic cleansing" often spill across borders to create new zones of conflict, as Rwandan refugees contributed to the epochal war in the DRC (Congo). Massive numbers of political prisoners and gulag-like prison complexes are characteristic of dictatorships, especially totalitarian regimes such as communist North Korea or theocratic Iran, and increasingly concentrated within such regimes. However, Amnesty International estimates that around half of all states practice torture with some regularity, and unfortunately this includes some democracies--especially recent democracies in the developing world. High levels of social inequality and low levels of judicial accountability are the leading factors associated with systematic occurrence of torture, especially in Latin America. Discrimination by race, religion, caste, gender, and national origin is still endemic and often state-supported in South Asia and the Middle East, while even some democratic developed countries generally respectful of their own citizens have responded to high levels of migration with discriminatory policies that violate international standards.

Remedies: The "international human rights regime"

The ensemble of local, national, and global human rights organizations has been labeled an "international human rights regime"--an issue-specific pattern of global governance. There is no definitive enforcement of human rights, but critical combinations of various forms of transnational pressure have resulted in significant reforms, such as the demise of the apartheid system in South Africa. Human rights campaigns are often catalyzed by transnational issue-networks that include social movements, international organizations, and experts, in fluid habitual exchanges that pressure states from above and below. Margaret Keck and Kathryn Sikkink depict human rights appeals as a "boomerang" launched by a powerless civil society that reaches around the state to secure transnational pressure, while Thomas Risse, Stephen Ropp, and Kathryn Sikkink propose a phased "spiral model" in which such pressure evolves through phases of state denial, normative lip service without policy change, then limited local empowerment, more systematic reform, and eventual state socialization and internalization of human rights norms.

At the global level, standard-setting and monitoring by international organizations depend mostly on "naming and shaming"--but the vigor of China's efforts to avoid annual censure by the United Nations Human Rights Commission, including generous aid packages to influence the votes of member states, suggests that such symbolic diplomacy does have a diffuse impact on violators. In addition to the Commission (now Council) that considers country situations, each of the major treaties generates a member-state

reporting regime, such as the ICCPR's Human Rights Committee. Issue-specific U.N. rapporteurs conduct field visits and issue reports on abuses such as forced disappearance, that can be influential in international or bilateral sanctions, or even secure the release of prisoners highlighted by the reports. At the regional level, the European Union, Organization of American States, and African Union also host Human Rights Commissions, which vary correspondingly from highest to lowest level of activity, accessibility to individual vs. state complaints, and mandated impact on member states' domestic policies. Bilateral diplomacy can also serve as an important source of signaling, especially by superpowers with influence over abusive regimes, and seems particularly useful in occasionally freeing prominent political prisoners or protecting officially stigmatized ethnic or religious groups (such as Soviet Jews). However, diplomatic pressure alone has proven relatively unavailing in addressing broader patterns of repression imbricated in the dominance of the target regime.

Transnational legal processes run the gamut from global to regional to bilateral exercise of universal jurisdiction. The International Criminal Court, following the U.N.'s post-war tribunals on Rwanda and the Former Yugoslavia, is the only permanent universal body with jurisdiction over war crimes, genocide, and crimes against humanity. Its combination of an autonomous Prosecutor and Security Council referral, with the standard safeguard that it can act only when domestic remedies are exhausted, has secured the participation of over one hundred member states--but not the U.S. The ICC has been used mainly for war crimes in Africa since its 2002 activation. The EU and OAS also have human rights courts with contentious jurisdiction and the ability to levy sanctions against member states. Since treaties such as the Convention Against Torture and domestic mechanisms like the U.S. Torture Victims' Protection Act grant willing states universal jurisdiction to prosecute foreign nationals in their own domestic courts for crimes against humanity committed abroad, several states have also secured national-level criminal or civil judgments against fallen dictators and war criminals (such as Argentine generals). Spanish judge Baltasar Garzon, who brought the Pinochet case, has been particularly active in testing the parameters of transnational legal accountability in a variety of cases.

Global economic sanctions have been issued in a few of the most egregious cases of gross violations by pariah states, but have sometimes had a contradictory humanitarian impact even where consensus was achieved. Bilateral diplomacy and sanctions have been more widespread and influential, including trade and investment limitations, foreign aid conditionality, and limitations on military assistance to repressive regimes. While the U.S. Office of the Treasury sanctions dozens of states each year, only a proportion of sanctions are based on human rights violations--but they include gross violators such as Burma, North Korea, and Sudan. Although U.S. foreign assistance legislation such as the Kennedy, Harkin, and Leahy amendments specifies that neither development nor military assistance should be given to violators, these limits have been very unevenly enforced and often overridden on national security grounds by the Executive; however, the *threat*

of suspension of aid has occasionally secured investigations, accountability, and even a reduction in violations by client states. The corresponding carrot for the stick of economic sanctions is human rights-directed foreign assistance, such as governance aid and support for global or recipient country human rights organizations. The Nordic countries, Netherlands, and Canada have vital and effective programs of human rights foreign aid, training, and civil society promotion.

The ultimate enforcement of human rights is armed intervention against the violating authority. While the U.N. Security Council can authorize intervention in response to massive crimes against humanity, in practice the U.N. has acted only in the aftermath of regime collapse or conflict resolution--and U.N. peacekeeping forces on the ground as violations unfolded notably failed to protect victims in Bosnia, Rwanda, or Timor. More muscular interventions by NATO against abusive regimes did halt violence and contribute to subsequent return of refugees in Kosovo and Afghanistan, but with controversial civilian casualties. Attempts to regionalize intervention in African conflicts have foundered, most recently in Darfur. Unilateral interventions without multilateral consensus are often questioned as selective rationalization of national interest on spurious humanitarian grounds, but we must note that the countervailing interests of neighboring powers afflicted by spillover violence have been the only check on some of the worst violations, such as the Cambodian genocide halted by a Vietnamese invasion, or the murderous regime of Uganda's Idi Amin displaced by Tanzania.

International human rights movements monitor, lobby, protest, and reform human rights around the world--usually in conjunction with local organizations and victims. The flagship global organization Amnesty International, established in 1961 to advocate for "prisoners of conscience," now comprises millions of members in over 150 countries--and has secured the freedom of around one-third of its subjects from diverse regimes. Along with peers like Human Rights Watch, Amnesty's non-partisan annual reports on country conditions and monitoring of conflict situations and emerging abuses often influence global and bilateral condemnations and sanctions. Country-specific campaigns, increasingly mobilized via the internet, are credited with shielding some local advocates and pressuring vulnerable repressive governments for limited reform. An additional element of advocacy mobilizes transnational identities, such as trade unionists defending their threatened colleagues in Colombia, Christians pressing for religious freedom in China, and women's groups campaigning to have genocidal rape designated as a war crime by the International Criminal Court. Local human rights movements generally seek to transcend political and ascriptive identities, and derive their power from a combination of Gandhian non-violent collective action and globalized information politics. Such protests contributed strongly to transitions to democracy in many Latin American countries, South Africa, and the Philippines, and former political prisoners became the first democratic leaders of Poland, the Czech Republic, South Korea, and Timor. Human rights campaigns dedicated to identifying new genres of transnational abuse have introduced new forms of leverage through boycotts, and new mechanisms of

global governance such as codes of conduct for multinationals to limit labor abuses and an international certification scheme to stem the trade in "blood diamonds," whose illicit export contributed to war crimes in several notorious African conflicts.

Human rights reform

When the international human rights regime is successful, states engage in human rights reform. Human rights reform can be studied from a policy design, comparative, or transnational perspective--since such reforms have often diffused or been implemented by global as well as national institutions. Retrospective accountability for abuses committed in a prior war or dictatorship is labeled "transitional justice," and generally consists of some combination of investigation ("truth commissions"), adjudication, and reparations. Human rights literature is replete with debates on the effectiveness and impact on regime stability of different forms of transitional justice, from Argentina's maximalist trials of former military rulers that led to rebellions to South Africa's explicit trade-off of truth for justice. Post-conflict accountability is increasingly implemented by a hybrid blend of global and national institutions, as in Cambodia and Sierra Leone, which marks an evolution of sovereignty and international law.

New democracies and regimes responding to civil rights campaigns against chronic discrimination also establish forward-looking institutions and policies to improve citizen rights. National human rights institutions for domestic monitoring of policies as well as practices relevant to human rights, mandated by the United Nations under the Paris Principles, were originally established by Western European democracies but have diffused to dozens of states in Latin America and Asia. Such human rights institutes sometimes overlap with and sometimes replace ombudsman offices, which are empowered to independently investigate and represent citizens (and in some cases, migrants) against allegations of abuse by any government agency. Finally, programs of human rights education for agents of authority, vulnerable groups, schoolchildren, or the general population are promoted by global agencies such as the United Nations High Commissioner for Human Rights, regional bodies like the OSCE's High Commissioner for Minorities, and national governments seeking to implement international human rights norms.

Challenges

While the struggle for fundamental human dignity has advanced tremendously in the sixty years since the Universal Declaration, challenges to the theory and practice of human rights continue. Since human rights are based in a liberal legal model of the primacy of the public individual, cultural, sociological, and even feminist critiques of universalism question rights' relevance for the pursuit of disparate collective social goals and identities. During eras of renewed conflict, especially the unconventional transnational threat of terrorism, states revive old arguments about national security

trumping inalienable rights--and human rights scholarship contests the rationale and record of such logics. Critics and campaigners alike note the increasing salience of abuses committed by private actors who are not accountable under the "government and opposition" model the international human rights regime was created to address: from multinational sweatshops to private security contractors to patriarchal religious authorities. Moreover, many abusive situations result from a lack rather than a surfeit of state authority. Human rights advocates and theorists respond that these concerns suggest the need to expand human rights norms and mechanisms, not abandon them. While human rights has not halted "death by government" or other systematic abuses of power, it has proven a resilient tool for the voiceless and vulnerable to often endure and occasionally prevail.--Alison Brysk, University of California Irvine

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-- *Alison Brysk*
University of California, Irvine