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Human Rights

Human rights are a discourse and ideology around which a massive global phenomenon has formed since World War II. This phenomenon encompasses the human rights community, including human rights experts and activists, and artifacts including human rights covenants, policy papers, and reports. The core of human rights ideology rests on the ideas of equality and emancipation, and is further anchored in the universalizing category of “everyone,” a gender-neutral and all-encompassing term that eludes distinctions on the basis of nationality or other criteria. At the same time, human rights can be conceptualized as entities protecting the individual against the arbitrary treatment of the sovereign, whether embodied by a monarch, state, tribe, clan, or family.

In their emphasis on the individual, human rights are connected to international humanitarian law, which likewise places its emphasis on the individual, not on states, which are the primary subjects of international law. Both human rights and international humanitarian law also aim to find different ways of protecting the individual. Yet the temporality and overall vision of human

nature and reality are fundamentally different. While international humanitarian law is more history-oriented and pessimistic, human rights ideology is forward-looking and utopian, founded on a notion of human nature as flawed but capable of improvement. Thus, the main impetus of human rights work is to address existing wrongdoing and harmful patterns and structures, and to work toward future improvement. Simultaneously, future improvement forms a fundamental legitimating component for human rights work occurring today.

The history of human rights is commonly presented in scholarly accounts through a standardized, mythical “textbook narrative of origins,” a tale of forward-looking progressiveness authored primarily by Western legal philosophers and legal scholars that depicts human rights as the ultimate outcome of human evolution. Sometimes, this narrative is presented via a “universalizing variation” that aims to find precedence for human rights thinking across different eras and civilizations. Yet such efforts fall into conceptual vagueness by overlooking the distinctive discourses and contexts of such efforts (Halme-Tuomisaari and Slotte 2015). The same problematic applies also to the universalism–relativism debate that has characterized human rights since the 1947 statement by the American Anthropological Association (AAA) on the planned Universal Declaration of Human Rights (UDHR) adopted in 1948 (AAA 1947; UN 1948).

Over the past few decades, the history of human rights has started to awaken vivid debate (Moyn 2012). The gist of the debate can be summarized by two questions. First, have human rights in some form always been around, in all cultures and geographic areas, gradually growing into human consciousness via the “evolution” of mankind? Or are they rather “new inventions,” receiving their origin in a “big bang moment,” most commonly seen as the adoption of the UDHR, followed by subsequent expansion in geographic and substantive terms? Today, most scholars have adopted an interim position, seeing human rights as a particular post-World War II phenomenon while simultaneously acknowledging diverse forms of continuity, both institutional continuities, with practices of the League of Nations, and ideological continuities with earlier rights initiatives that extend back to the revolutionary era and natural rights tradition.

The popularity of human rights can be connected both to their emancipatory ethos and to their capacity to appear simultaneously as “absolute” and “undefined”; or, in the words of legal scholar Duncan Kennedy, universal and factoid (Kennedy 2002). These qualities also lend themselves to the relationship that human rights have to law: human rights are both law *and* reason for law. Combined, these qualities support the continued expansion of human

rights as they have in the much-utilized terminology of Sally Merry become “vernacularized,” as new concerns and interest groups have become recognized under their umbrella (Merry 2006). The transition of women’s or indigenous peoples’ rights into human rights are familiar examples, with the rights of LGBTQI people forming the latest high-profile example. Human rights also provide important legitimation for humanitarian interventions and form a contemporary standard of “civilization.”

A central dimension of expansion is the *legalization* of human rights, illustrated by the UDHR. While the 1948 document was adopted as a legally non-binding declaration, over the subsequent decades most of the declaration’s content has gained legal recognition either through the introduction of national legislation or via specialized United Nations human rights covenants—including the two primary covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Today, some legal scholars argue that basic human rights tenets form customary international law. Adherence to human rights forms a contemporary measuring stick for “modern nations,” which in some instances is used as legitimation to curtail the recognition of state sovereignty, resulting in such labels as “rogue” or “failed” states. Today, human rights are accompanied by vast monitoring mechanisms. Yet there is continual concern for the “culture of impunity” for grave human rights violations.

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