Human Rights Debates Presented by William Slomanson, Jack Donnelly & Oona Hathaway

The idea of Universal Human Rights (UHR) was largely developed post-World War II alongside the development of the United Nations. While Human Rights ideology has its beginnings thousands of years ago, the practice of universal human rights began with the first Geneva Conventions in 1864, during the American Civil War. The Geneva Conventions focused on the wounded and sick in battle, for all peoples and for all States. The rise of the League of Nations, founded by the Treaty of Versailles ending World War I, was created to end the practice of war to settle disputes, as well as to better the welfare of world citizens. World War II saw the dissembling of the League of Nations, as it failed to stop one of the worst and most inhumane wars in modern world history. The atrocities of World War II, including the genocide of Jews, Gypsies, Poles, Soviets, and many other groups, under the purview of Hitler's Nazi Germany, launched the world community's campaign against Human Rights abuses with the Universal Declaration of Human Rights (UDHR), created under the new United Nations.

Throughout the history of the UDHR, many issues have arisen regarding its ideology and practice. William Slomanson, Jack Donnelly and Oona Hathaway are just some of the many scholars that follow the evolution of UHR. I will provide an overview of the different debates each of them presents, compare and contrast their overlapping debates and finally I will provide my own insight into the debates that the authors present.

Slomanson-The "Western" Derivation of Universal Human Rights

William Slomanson, in his chapter on Human Rights, in his textbook *Fundamental Perspectives on International Law,* provides a history of Human Rights and brings up several debates presented by UHR. One of the debates evolved from the foundation of UHR. Many "non-Western" States see the UDHR as based on Western cultures and religions and that it fails to take

account for the varied cultural and religious differences around the world. The UDHR was created after World War II, where Western hegemony dominated, and therefore, some critics say that the framers lacked input from lesser-developed nations as well as those with more diverse political and social viewpoints.[1] The two covenants created in 1966, the International Covenant on Civil & Political Rights, and the International Covenant on Economic, Social & Cultural Rights, provided some restitution for these critics. However, there is still a large number of States, including those of Asia, the Middle East and Africa that see these discrepancies in the UHR.

Slomanson provides a section on each of the major regions of the world, and how they have received human rights. He makes it clear in these sections, that because of the "Western" derivation of UHR, UHR are less respected in the certain regions specified above. In Africa, even though the Organization for African Unity (OAU) has some programs set up to respond to human rights abuses, human rights protection has not seen the same success as in "Western" regions. Critics say that it is largely because of cultural relativism. Africa tends to perceive human rights as having a broader basis than just the individual. Africans also tend to have a distrust of the internationally derived human rights measures.[2] In China, UHR are seen as a pretext for intervention in the internal affairs of socialist nations.[3] China, presents an important issue that is shared the world over. Many States, including many of the West, see UHR as an attack on their sovereignty. China, in particular, believes that it is the responsibility of the State to create the internal laws that govern human rights, and not that of the international community.[4] Other Asian States, including the democratic, developing and poor ones, take on another issue having to do with the ability to carry out human rights. They say the Western-derived concepts benefit only developed States and that they have little meaning for the States whose people don't even have all

[1] Slomanson, 2007, pp.
[2] Slomanson, 2007, pp.
[3] Slomanson, 2007, pp.
[4] Slomanson, 2007, pp.

of the basic necessities of life.[5] Essentially, how can a State provide UHR if they don't have the means to do so?

The Middle Eastern perspective, which is coupled with the Islamic perspective, has to do with their perception of human rights. These States have their own idea of human rights, which largely has to do with their spiritual salvation.[6] They are guided by their religion and not by international human rights law.

Donnelly-Human Rights, a Key Piece in the Development of a New Standard of Civilization

Jack Donnelly, in his article "Human Rights: A New Standard of Civilization?" presents several developments that the existence of human rights has created. The basis of his argument relies on the idea that human rights have changed how States govern their people and how they interact with other States. He argues that human rights have created a new standard of civilization that is in fact a return to something much older than modern international law. He says,

> "International human rights, rather than a deviation from principles defining the essence of the 'Westphalian' system, represents a return to a conception of international society that is older and morally much more attractive than the positivist vision of pristine sovereignty."[7]

Donnelly presents human rights in international relations, as a legitimizing norm. In opposition to scholars such as Hans Morgenthau, Headley Bull, Michael Glennon and Anne-Marie Slaughter, who take an instrumentalist approach to international law, Donnelly sees human rights having evolved into a norm. This norm-approach is what Donnelly calls the "New Standard of Civilization." He presents several examples to bolster his argument including an example on genocide and China after Tiananmen.

Donnelly argues that "the international response to the genocides in Bosnia and Rwanda, mark a significant advance over previous international inaction to genocide, such as in

[5] Slomanson, 2007, pp.
[6] Slomanson, 2007, pp.
[7] Donnelly, 1998, pp.23

Cambodia."[8] The reaction represents an international concern and opposition to grievous human rights abuses. Donnelly does concede, however, that this new norm has not yet been able to encourage the international community to act before a human rights abuse on such a large scale occurs.[9]

Another representation of changing international human rights norms occurred after the Tiananmen Square massacre in China. Donnelly suggests that the international campaign against China represents changing norms in international human rights.[10] Although China has not changed their human rights behavior since, and the international communities campaign of sanctions has dissipated, this example shows, as Donnelly says, "they [international human rights] impose supplementary constraints on the freedom of action of states." He goes one to say, "the reality of these constraints, and the importance of asserting the relevance of standards of international justice, are not less important than their limits."[11] This assertion of the changing norms in society, even if just a glimpse of the change, is an important indicator of the effectiveness of such an imposition of rights.

Donnelly then suggests that international norms do have an impact on State practices.[12] He uses the move of States towards more democratic governments as an example of this. In Latin America, most States have moved towards electing their governments in open and fair elections. And while their elections incite contestation, the effort itself, is a representation that human rights norms are being recognized and changing State practices. Donnelly adds, that this move towards a democratic environment is not universal, and in many Southeast Asian, and Middle Eastern States,

[8] Donnelly, 1998, pp.16
[9] Donnelly, 1998, pp.17
[10] Donnelly, 1998, pp.17
[11] Donnelly, 1998, pp.18
[12] Donnelly, 1998, pp.22

it is unheard of.[13] Those States that are not partaking in democratic governing, however, are seeing criticism and facing political costs as a result.[14]

In his final point, Donnelly says that human rights abuses have been contained within International Human Rights Law and that the incorporation of human rights into international norms shows moral progress.[15] He suggests, "that not merely the demise of racist imperialism but also the rise of universal human rights ideas presents a story of moral progress."[16] He uses examples in the past, such as the slave trade and its abolition, as representing moral progress that would be uncontested today. He argues that these norms are 'universal' since they apply equally to everyone, and they are unpartisan. Human rights, Donnelly says, represent moral progress, since they find their foundation in an idea that we are all "human and, as a result, are equally entitled to certain goods, services, opportunities and protections."[17] This progress is also represented in that States, in order for them to be regarded as legitimate, and in order for them to be full members of international society, must adhere, or make a genuine effort to adhere, to International Human Rights Law.[18]

Hathaway-The Realities of the International Law of Torture

In Oona Hathaway's article, "The Promise and Limits of the International Law of Torture," she presents the realities of what had become of this 1984 law; what States signed on, what States didn't and what States abide by the law, and those that don't. Her article can also be seen as a case study in how States use international law: Whether States take an Instrumentalist approach, like Morgenthau, or whether they take a Normativist approach, like Donnelly.

[13] Donnelly, 1998, pp.18
[14] Donnelly, 1998, pp.19
[15] Donnelly, 1998, pp.20
[16] Donnelly, 1998, pp.20
[17] Donnelly, 1998, pp.21
[18] Donnelly, 1998, pp.21

Hathaway begins her article by stating that even though such a law on torture exists, and has been ratified by many States, the practice of torture still continues today. She sees this revelation as both a moral challenge, as well as a challenge on international law and its ability to impose global order.[19] The fundamental question that Hathaway discusses is whether or not international law really works and if it does, how it works. She uses the Convention on Torture as her case study. One end of the debate says, "States don't give up the right to engage in torture unless they have no intention of using it anyway. And once they join treaties like the Convention against Torture, States will act no differently from if they had not done so."[20] This argument takes a crude instrumentalist ideology of international law. The other side of the debate argues, "States do not simply join treaties that are in their material interests. Rather, States will join a treaty if they are committed to the ideas and goals it embodies, even if doing so may be costly. And once States join…they will abide by their international legal commitments 'most of the time.'"[21] This idea represents a more subtle instrumentalist ideology. Hathaway takes another view and argues that international law is effective, but not in the above subtle instrumentalist way. She sees that "both [arguments] fail to consider the role of internal enforcement of international treaties on countries' willingness to join and abide by them." She goes on, "both, ignore almost completely the indirect effects of treaties on countries' decisions to accept international legal limits on their behavior and then to violate or abide by them."[22] The data Hathaway has collected and presents in this article, reveals that the debate is, indeed, like she says, not black and white, but a complex interwoven amalgam of interests.

Hathaway's evidence supports five conclusions of which I will list. First, States that ratify treaties outlawing torture don't necessarily have better torture practices than those who don't. This

[19] Hathaway, 2004, pp.2
[20] Hathaway, 2004, pp.2
[21] Hathaway, 2004, pp.2
[22] Hathaway, 2004, pp.2

excludes enforcement articles 21 and 22 of the Convention. Second, democratic States are more likely to make the legal commitment not to use torture than non-democratic States. Third, democratic States that use torture more frequently are less likely to join the Convention than those who engage in less. Fourth, non-democratic States that use more torture are more likely to join the Convention than those that use it less. And finally, not only does it appear that the Convention does not always have the intended effect of reducing torture in States that ratify, but also, in some cases, the opposite might even be true.[23]

Hathaway then attempts to account for the reasons why these trends exist. She says that perhaps more torture occurs in some cases because the Convention lacks enforcement measures aside from those that are optional. She then goes on to say, that States abide the law for a variety of reasons, and that the lack of enforcement measures can't simply be the end-all. A reason for why the third finding might be so, is because those States that don't sign on take the law seriously and would impose institutions to combat the torture. Those States might see this as costly, so they decide not to sign on. An answer for the fourth finding, could be that States who have poor torture practices have nothing to lose by signing onto the convention, but those who have relatively good torture practices, have a lot to lose, so they decide not to sign on. Reputation plays a big part in the first finding. Those that sign on and have poor torture practices, do so in order to look good to the world community. By signing on it supposedly shows that the State is making a commitment to ending torture. The State would hope that this commitment would attract aid, FDI, trade, etc.[24]

Hathaway ends her discussion by providing three lessons learned from the Torture Convention. First, enforcement isn't essential in order to have effective international law, but it is important. She stresses that domestic enforcement, and reputational incentives are other methods used to achieve compliance. Second, domestic institutions are essential for compliance in

[23] Hathaway, 2004, pp.3
[24] Hathaway, 2004, pp.6-10

international law, as long as they serve to enforce international law. And finally, State reputation plays a central role in a State's decisions to participate in and comply with the international torture regime. Hathaway ends, by saying, even though the torture regime has not achieved all that it was meant to achieve, it still has had a normalizing effect in creating the universal view that torture is an unacceptable practice in the world today.[25]

Comparing Slomanson, Donnelly and Hathaway

These three authors, although discussing several different topic areas in Human Rights, have hit on one main theme seen throughout the human rights debate, consistent in international law; the effectiveness of international law and how it is or why it isn't effective. The authors tend to the normative side of the international law ideology spectrum, but Hathaway presents the instrumentalist view most prominently. The authors present human rights law as having changed State practices throughout its history. Where they differ, is when they try to understand why States don't abide by international human rights law. Albeit, the differences relate to the subject areas and not their individual debates. Slomanson sees international human rights law as failing in areas that weren't included in the creation of the human rights, such as Asia, the Middle East and Africa. Donnelly presents the failures of human rights law as the law still growing, and that the development of a 'new standard of civilization' takes time to grow. Hathaway on the other hand, sees compliance in international human rights law, as an end to a series of other questions and debates, such as institutional reform and reputational incentives.

How I See It

Since, the articles have a wide range of topical debates, I will discuss only the debate that links all three articles. I find Oona Hathaway's perspective on international human rights law to be the most compelling. Although I see how parts of Slomanson and Donnelly fit into her argument,

[25] Hathaway, 2004, pp.11-12

she presents the best case for why States and people abide by international human rights law. But if I'm being realistic, all three of the authors present debates that I agree with. Hathaway's paper, in particular, was most convincing because it provided an in-text analysis of the debate. She provided data to back up her assumptions of both the law of torture and her instrumentalist point of view.

I'm sure that if you asked any of these authors, they would not find international human rights law following any strict instrumental or normative ideology. They would see a mixture of the two. With different debates and issues, different ideology shines most prominently. That is why it is hard to compare these papers, because they deal with separate issues and debates, yet they have a underlying ideology about international law. So perhaps I find Hathaway's article most persuasive because it fits the debate she is speaking towards. However, if you look at Donnelly's issue, it would be hard to deny the influence of international law as a normalizing tool.

The 'Westphalian' international system that we [the world] have been living under for the past four centuries has ingrained the idea of sovereignty into States' institutions. And that sovereignty means that they are the masters of themselves. This means that they have to answer to no one higher. With the creation of the United Nations, a new idea of State sovereignty came to the fore, along with the idea of an international, interdependent global community. This idea has been well received by some, and not so much by others. In the past 64 years, States have come a long way in accepting this new ideology. However, it still has only been 64 years, and old habits/ideologies die hard. It will be some time before international human rights norms take root and become effective across the spectrum of States and human rights issues. Hathaway understands this, but she still sees States governing based on State interests, and still accepting international law based on State interests. She agrees that human rights law has created some normative effects, but that it is still largely in the stages of instrumentalist ideology.

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