The Sociological Marketability of Human Rights Doctrine

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Abstract

Modern human rights theory is increasingly susceptible to politicization in a manner that debilitates its enforcement-particularly in third world nations and the Eastern bloc. Seen by many as a tool of western imperialism and a banner of democratic crusade, it is mistrusted by those who could otherwise benefit greatly from its advocacy and implementation. This article aims at exploring the challenges of human rights' *sociological marketability* in light of these issues. More specifically, it attempts to address the problem of sociological marketability of human rights in increasing religiously and culturally pluralistic globalized society by examining the deep entrenchment of modern human rights theory within its roots of Western political philosophy and challenges that such limitations cause, arguing that there is no better way to ensure the survival of human rights doctrine than to depart fromWestern individual-centric view that finds itself incompatible with eastern religious and ethical systems and cultures.

Key words: Sociology; Marketability; Human rights

INTRODUCTION

An ever-present problem within human rights theory is that of philosophical foundations and moral legitimization. Though this overshadowing dilemma sheds light upon the intellectual roots of human rights doctrine, it does so at the expense of stagnating practicability in terms of international adherence, thereby causing a discrepancy between theory and practice. The defense of dignity that is the basis of human rights doctrine, historically separated from its religious roots through the phases of the Enlightenment period and the UDHR, finds itself conceptually vulnerable and defense*less* in the midst of a growing religiously and culturally pluralistic world. Though its drafters had good intentions in giving strategic importance to language in formulating the UDHR, in hoping to create a vehicle for human rights that would transcend individual difference, they did so in a manner that left human rights morally ungrounded. Martin describes this mechanistic tactic in writing,

> After World War II, the drafters of the various international human rights instruments…used secular language to rise above the particularities of individual religious and ethical traditions. The word "nature," for example, was preferred to the word God. The drafters postulated a common understanding of "human dignity" as evidence of a universal commitment to the "equal and inalienable rights of all member of the human family." Once approved, tensions again arose between religiously based ethical traditions and definitions of a common/secular morality…". (Martin, 2005, p.828)

This article aims at exploring the challenges of human rights' *sociological marketability* in light of these issues, using the arguments of Donnelly and Twiss as the backdrop of discussion of human rights as a self-existing holistic normative structure that enjoys universal moral consensus, Beitz's criticism of natural rights as a basis for human rights doctrine, and Martin and An-Naim's advocacy of cooperation between human rights, religion, and- in the case of the latter-secularism.

1. LITERATURE REVIEW

One important aspect of Donnelly's approach to human rights theory involves the idea of 'historical contingency'

(2003, p.1) - specifically in discussing his argument for the compatibility of universal rights with specific historical processes of change. An-Naim's argument of the synergy of human rights, religion, and secularism will do more to shed light on this topic, though to a lesser extent than the theoretical approach of Martin. But before discussing the importance of making human rights doctrine more tolerant of religious and/or non-Western views, it is necessary to examine Donnelly's perspective of philosophical foundations and the problems that a lack of international agreement thereupon might or might not pose. Doing so, with the help of Twiss's advocacy of human rights as an effective global ethic, will clarify the idea of human rights doctrine as a universal normative structure that can stand alone.

Donnelly describes human rights doctrine as entailing both a "moral universality' and an "international normative universality" (2003, p.1). For our purposes, it is only necessary to clarify the latter descriptor. He writes,

> [Human rights] are almost universally accepted, at least in word, or as ideal standards. All states regularly proclaim their acceptance of and adherence to international human rights norms, and charges of human rights violations are among the strongest complaints that can be made in international relations. Three quarters of the world's states have undertaken international legal obligations to implement these rights by becoming parties to the International Human Rights Covenants, and almost all other nations have otherwise expressed approval of and commitment to their content (2003, p.1).

It is interesting that near universal consensus can be made with so little agreement on philosophical foundations. Donnelly himself, while describing this lack of agreement, does not seem to find in it a problem for human rights theory. With his discussion rooted in a synopsis of differing views on human nature, he discusses the challenges of attempting to encapsulate human rights theory with any particular vision, whether that be of Aristotle's "political animal," Marx's creative material-driven individual, or Kant's rational human being (2003, pp.16-17). He posits, rather, that though some argue for needs-based rights (2003, p.13)…

> The source of human rights is man's moral nature, which is only loosely linked to the "human nature" defined by scientifically ascertainable needs. The "human nature" that grounds human rights is a prescriptive moral account of human possibility. The scientists' human nature says that beyond this we cannot go. The moral nature that grounds human rights says that beneath this we must not permit ourselves to fall (2003, p.14).

In *The Three Monotheistic World Religions and International Human Rights*, J. Paul Martin argues that *only* international human rights standards can provide mutual understanding and reconciliation among the Abrahamic religions in allowing them to arrive at a general consensus on social norms. He does so by a) examining their historical propensity for change as respective religious traditions and b) attempting to provide empirical evidence that religiosity is not necessarily inherently linked with prejudice. By separating core religious beliefs of cultural adaptations that oftentimes clash with modern conceptions of human rights, each tradition can reexamine its own codes and thereby coexist alongside its Abrahamic counterparts. He first provides a brief history of the international human rights doctrine and its religious roots, showing how both have been intertwined since the modern conception of human rights. Referencing Western Europe's 450 year challenge of religious authority-based social ethics, i.e. the Enlightenment period that birthed philosophies such as John Locke's natural rights doctrine, he shows how the 1948 UDHR came to serve after World War II as a response to the secularization of ethical ideas, with drafters such as Eleanor Roosevelt substituting words like "nature" for God in trying to create a universal meaning system that would overlook individual cultural and religious differences. Martin illustrates religion and human rights' historical interdependence by providing examples such as Martin Luther's defense of the freedom of conscience against the Roman Catholic Church and the religiously-fueled 18th century antislavery movement. He also discusses their mutual critique of one another. Human rights have often seen religion as oppressive, exclusive, and prejudicial. For example, the Catholic Church does not allow women to become priests, the Great Inquisition allowed the Church to use civil powers to forcefully proselytize; even *within* religions there are divisions that make us question religious traditions' stances on human rights. Religion seems to thrive on exclusivity; namely, the self-affirming otherness it preaches. Religion, just as well, has its issues with human rights, oftentimes seeing human rights doctrine as ungodly, ethnocentric, and a tool for Western imperialism. Examples such as women in the priesthood and Shariah in Saudi Arabia serve to show how many religious communities see religion as overriding international human rights, claiming the latter to be outside of its jurisdiction in meddling with internal affairs (see examples of Russian Orthodox Church's "Social Concept" and Cairo Declaration of Human Rights in Islam). Nonetheless, using examples such as the abolition of slavery, women's rights, and the Church of Christ's endorsement of human rights, Martin argues that changes have indeed occurred within religious communities over time, which give hope to the possibility of religion's arrival at a common ethical position through human rights. In order to achieve mutual consensus, religious must separate their core beliefs from cultural adaptations; doing so will show that they cover much of the same moral ground in dealing with issues of social justice, equality, and human dignity-without having to give up their own respective identities.

Before looking at these authors' approaches, it is important to touch upon Beitz's criticism of natural

rights as a basis for human rights doctrine, given this article's argument that the latter must learn to expand its identification, if not break away altogether, from its Western oriented political philosophy roots as deeply entrenched in the Enlightenment period. Doing so will also bring to light Beitz's view of the historical contingency.

Previously mentioned is the departure of human rights theory from its religious roots through a multiphase process covering the Enlightenment defense of human dignity rooted in a rational order of being as illustrated through the work of Locke as well as the formulation of the UDHR. Beitz describes, in addition to this, and with specific regard to the problem of philosophical foundations, the contrast between religion and human rights- or, to be more exact, between a rights-based universal order and modern human rights doctrine. He writes,

> [The idea] that natural rights have some sort of permanent existence in a separate normative order…is difficult to render clearly…for it is explicit in the origins of this practice that human rights doctrine does not incorporate any view about the justification of human rights in an independent order of natural rights, in the natural law, or in God's commands (2009, p.54).

Beitz moves on to his criticism of natural rights as a basis for human rights given this discrepancy, focusing on the fact that natural rights involve an element of 'timelessness'- i.e. "that their requirements are invariant across time and space" (2009, p.57). He argues- as we will see, similar to Donnelly, Martin, and An-Naim- that human rights, unlike natural rights, are historically contingent, writing,

> International human rights are not even prospectively timeless. They are appropriate to the institutions of modern or modernizing societies organized as political states coexisting in a global political economy in which human beings face a series of predictable threats. As the social, economic, and technological environment evolves, the array of threats may change. So, perhaps, may the list of human rights…. (2009, p.58)

Here, once again, we see an emphasis on human rights as historically contingent rather than engulfed in a limiting sphere of "timelessness" such as that criticized by Beitz; this across-the-board notion of historical contingency is especially important in supporting this article's argument that human rights theory itself must evolve away from its roots in Western political philosophy so as to appeal to more solidaristic cultures, religions, and political communities of the Eastern bloc and the third world and thereby increase its marketability; it must do so without diluting itself completely of its Western origins while simultaneously expanding itself to become more inclusive. Its most sure way of doing this is through applying a theoretical understanding of the mutual historical reliance of religion and human rights similar to that illustrated by Martin with the practical "synergistic" model proposed by An-Naim.

2. RESEARCH METHOD AND DATA

This study used qualitative analysis to assess current human rights doctrine with specific regard to the issue of foundations. Specifically, it relied on developments in human rights theories proposed by: An-Na'im, Beitz, Donnelly, Martin and Twiss. The idea that universal human rights is susceptible to historical change- and is itself a historically changing subject- is a recurring theme that was explored throughout this article, particularly in the works of Donnelly, Beitz, Martin, and An-Naim.

Indeed, Donnelly's previously mentioned idea of "historical contingency" is important to emphasize especially in light of this article's call for human rights doctrine to become more expansive so as to increase its international pluralistic sociological marketability. Once again, it is important to note how, interestingly, near universal consensus can be made with so little agreement on philosophical foundations. By international normative universality, Donnelly refers to the general acceptance of the human rights doctrine by the international community either through direct or indirect subscription. As previously mentioned, Donnelly looks at this lack of agreement on philosophical foundations as one of human rights' positive attributes. He perhaps naively goes out on a limb in doing so, in that he underestimates the diligent skeptic's criticisms, but nonetheless argues that "Moral arguments can be both uncertain in their foundations and powerful in their conclusions and applications…Whatever their limits, substantive theories of human rights are both necessary and possible" (2003, p.21).

Twiss's approach to human rights theory is similar in that he sees human rights doctrine as self-sufficient in that it can stand alone as its own "global ethic"; this is of particular importance in light of this article's argument that a discrepancy between theory and practice is created by an overemphasis on moral legitimization and philosophical foundations- that in order for human rights doctrine to stand alone, it must do so without constantly needing to reinvent itself; indeed, it must make a clean break from the traditional philosophical foundations that, upon scrutiny, cannot hold. Twiss, like Donnelly, sees human rights doctrine as self-sufficient. He writes,

> It is certainly well and good to speak of the development of a global ethic, but it seems more than prudent to recognize that this ethic has in fact been emerging over the past six decades precisely in the human rights movement…It also seems prudent to build upon what we have already achieved rather than reformulating over and over again the same moral points that we have already agreed upon. (Twiss, 2011, p.220)

Both Donnelly and Twiss argue for a self-sufficient human rights doctrine that can stand alone apart from any sort of internationally agreed upon moral or philosophical foundation. Though their positions are well-defended, they ignore the barrier posed by cultural relativism and religion in relation to human rights doctrine. This is

particularly the case in contrasting Donnelly's individual-centric view of human rights in the Eastern, more collective, solidaristic approach of An-Naim or the argued compatibility of religion and human rights posited by Martin.

Martin argues that "common standards are necessary to govern relationships among religions and that international human rights standards best play that role" (Martin, 2005, p.827). As previously mentioned, he illustrates religion and human rights' historical challenges and interdependence by providing examples such as Martin Luther's defense of the freedom of conscience against the Roman Catholic Church (Martin, 2005, p.832), the 18th century antislavery movement (Martin, 2005, p.827), and the use of the Catholic Church to forcefully proselytize throughout the Great Inquisition (Martin, 2005, p.832), among others. Martin argues that changes have indeed occurred within religious communities over time, giving hope to the possibility of religion's arrival at a common ethical position through human rights. In order to achieve mutual consensus, religions must "[distinguish] between cultural adaptations on one hand, and core beliefs and moral standards on the other" (Martin, 2005, p.840). Here we see an emphasis on the historical contingency not only of human rights, but of religion itself. One of Martin's analysis' strengths includes the fact that it focuses not only on the monotheistic religions' connection through common social concepts such as human dignity, equality, and social justice in order to help reconcile them but also stresses the need to "take into account the impact of their respective political and social contexts showing that just as changes have taken place in the past, so changes in the future could lead to improved relationships among them" (Martin, 2005, p.829).

An-Naim approaches human rights doctrine more practically in setting out an ideal framework for mutual cooperation between religion, human rights, and secularism. He argues that "each of the three tends toward transformation in favor of the other two. Each needs the other two to fulfill its own rationale and to sustain its relevance and validity for its own constituency" (An-Na'im, 2005, p.56). Rather than envisioning a prospective mutual cooperation between religion and human rights, An-Naim argues that all three components are mutually dependent upon one another.

Overall, this article found that modern human rights theory is becoming increasingly susceptible to politicization in a manner that debilitates its enforcement-particularly in third world nations and the Eastern bloc.

Seen by many as a tool of Western imperialism and a banner of democratic crusade, it is mistrusted by those who could otherwise benefit greatly from its advocacy and implementation. If human rights doctrine is to enjoy self-sufficient modern hegemony, it must delimit itself from its Enlightenment roots in becoming more expansive and open toward Eastern cultural, religious, and political world views.

CONCLUSION

This article has attempted to address the problem of the marketability of human rights in an increasing religiously and culturally pluralistic globalized society. It has examined the deep entrenchment of modern human rights theory within its roots of Western political philosophy and the challenges that such limitations cause, arguing that there is no better way to ensure the survival of human rights doctrine than to depart from the Western individual-centric view that finds itself incompatible with eastern religious and ethical systems and cultures. Human rights doctrine must learn to expand its identification, if not break away altogether, from its Western oriented political philosophy roots as deeply entrenched in the Enlightenment period. In other words, it must become more expansive so as to increase its international pluralistic sociological marketability. In doing so, it will inadvertently become less particular toward rights that fall under the umbrella of capitalist democracy and simultaneously depoliticize to the point of sociological malleability. Doing so is not an option that will lead- as a reward of philosophical endeavor- to its greater legitimacy but is, rather, necessary for its legitimate survival.

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