

Does proper respect for human rights require a radical transformation of the international system?

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<https://www.e-ir.info/2011/02/20/does-proper-respect-for-human-rights-require-a-radical-transformation-of-the-international-system/>

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The international system can be understood very basically as the group of sovereign states which inhabit the world, the laws which govern them, and the institutions which are designed to uphold this framework. There is continued debate regarding how well this system fully respects and protects the individual human rights of citizens within those states. There has been a series of influential developments in the 20th century which have forced this debate to the forefront of normative theory, international relations and law. Such developments include the emergence of norms such as humanitarian intervention in order to protect human rights and an acknowledgement of the threats which intrastate conflict poses to peace and security as well as, if not more than, purely interstate conflict. A key example would be the ruling of the International Court of Justice (ICJ) that Rwanda's reservations to the Genocide Convention did not apply because the rights and obligations enshrined in the convention are *erga omnes* (ICJ 2006:5). Such norms would previously have been disregarded as illegal and incompatible with an international system of sovereign states but now prompt questions regarding whether more can, and should be, done to protect human rights. This essay will examine cosmopolitan claims that the international system is incapable of respecting human rights, the justifications for such claims and Buchanan's proposal for reform. It will also consider legal and philosophical criticisms to cosmopolitan thought and consider the pluralist account of how human rights can be properly respected through a system of sovereign states, as detailed in Jackson's *The Global Covenant* (2004).

Cosmopolitan theorists argue that human rights, such as those laid out in the United Nations (UN) Charter, are rights which all humans deserve by virtue of their humanity, and should not be circumscribed by borders but ought to apply regardless of any characteristics which differentiate us from one another (Buchanan 2004:121). Cosmopolitan conceptions of proper justice, which involve a comprehensive set of human rights, require a world constitutional order and reject a system of sovereign states as inadequate and lacking in coordination (Caney 2010:159). They object to a state-based system due to the principles of non-intervention and state consent which currently prevent human rights from being properly respected, especially in cases of intrastate conflict. This can be illustrated through the conflicts in Darfur from 2003; despite witnessing large-scale violations of human rights through genocide and other atrocities, the international community failed to provide any meaningful protection by properly implementing the Responsibility to Protect doctrine (RtoP) (Badescu and Bergholm 2009:287) as this would have required unlawful intervention.

However, there are many concerns regarding the ambitions of cosmopolitan thought from theorists, such as Griffin (2000), who claims that human rights are an essentially contested concept and expresses unease with the way philosophers and international actors arrive at definitions of universal human rights without providing a substantive account of how and why those rights should be considered 'human' (Griffin 2000:306-309). Thus it would be impossible, and potentially immoral, to radically reform the international system to support a universal set of human rights, when there is very little agreement on what exactly those rights would be. The way in which the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have been differentially recognised by the international community demonstrates this well. There is

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wider acceptance of the rights laid out in the ICESCR in socialist states where welfare is of great importance, but less so in developing states of the East such as Singapore and Malaysia, who have failed to ratify the Covenant, where the importance of a strong national structure and market growth are valued above such rights. Furthermore, the USA holds reservations to certain articles of the ICCPR, such as those regarding capital punishment. The fact that the most advanced liberal democracy does not fully observe international human rights demonstrates how difficult it would be to gain proper respect for a single set of human rights throughout the international system.

Nardin (2001) also argues that visions of a globalized world which would replace the state system underestimate the fundamental role which international law plays in maintaining peace. He emphasises how thinkers since Kant have understood the state system as being a guarantor of communal, and indirectly individual, freedoms and the importance of the framework for cooperation which is provided by international law between states (Nardin 2001:95-110). He is one of many authors who recognise the need for laws which defend the territorial integrity of the state, and the dangers of legalising permissive norms which can override such laws under certain criteria. Whilst such norms are often seen as superior in terms of their priority of the rights of the individual over those of the state, it is important to consider the consequences they may have were they legalised. There is no legal framework to support such norms: article 2(4) of the UN charter explicitly forbids any member to threaten or use force against any other (UN Charter 1945), with this in mind the failure to properly intervene in Darfur was justified as there is no legal doctrine to support the RtoP.

Despite this, solidarist authors such as Wheeler (2003:20-52) argue that there is a basic standard of common humanity which may require the norms of state-consent and non-intervention to be bypassed under specific criteria to allow for more permissive norms to be realised; Wheeler addresses humanitarian intervention specifically. However, concerns will continue to be raised that unleashing such permissive norms threatens the security provided for us by established, conservative norms and that there are ways of achieving a more thorough human rights doctrine for everybody without jeopardising the security of the state system (Bell 2010:103).

However cosmopolitan theorists maintain that this is morally wrong and the international community ought to provide access to global institutions which are designed to protect our human rights rather than the rights of the state (Caney 2010:159). Buchanan (2004:1-70) has developed a moral theory of international law which argues that public international law ought to have justice as its primary goal and require a basic standard of protection for human rights from states and governments before they can be considered legitimate. He claims that institutional moral reasoning ought to be used to engage with the international legal order and the capabilities of international institutions as they are, in order to determine the future goals of these institutions and allow human rights to become a global reality. As international law is currently consent based, states are as accountable as they agree to be, and compliance mechanisms designed to ensure human rights are properly respected are inherently weak. The Human Rights Council (HRC) which is the most active of the UN institutions in identifying and correcting abuses of human rights currently has no power to force a state to respect the rights of its citizens beyond naming and shaming that state at the international level. The UN, despite creating a charter which attempts to monopolise the use of force, is completely emasculated when it comes to enforcing such rules, highlighting the paradoxical nature of the two core values informing international law; respect for state sovereignty and a commitment to peaceful relations between states (Buchanan 2004:445). Cosmopolitan thinkers argue that until these most basic foundations of the international system are redressed there is little hope for the evolution of human rights.

In light of his moral theory of international law, and his engagement with institutional moral reasoning, Buchanan (2004) has proposed reforming the international system by creating a treaty outside of the UN based system, under which a coalition of the just would embark upon armed intervention in order to prevent violations of human rights under specific criteria. He argues that the UN Security Council has become an obstacle to the protection of basic human rights in internal conflicts and cannot be reformed as this would require that the Security Council willingly surrender their power. Therefore it must be bypassed in favour of such a coalition (Buchanan 2004:440-474). However, the idea of such a coalition seems somewhat implausible; Buchanan argues that neither state majoritarianism nor the support of the USA would be necessary in executing such a treaty and that gradually more states would join until participation would be wide enough that it could legitimately become law. However, from a realist perspective it is unfeasible to imagine that such a coalition could be formed; Bell (2010) describes how

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economic and military power as well as national self interest determines the relations between states rather than a moral desire to fully uphold human rights. Therefore a coalition of the just would be unlikely to develop without the power and influence of the USA, and other states would be reluctant to participate due to the costs of armed intervention which may be required of them in order to preserve the human rights of strangers. Whilst Buchanan's moral theory of international law and institutional moral reasoning are useful tools in the assessment of how far human rights are properly respected in the international system and what more needs to be done, the proposals for reform which he offers can be seen as too radical to be practical.

Despite the shortcomings of the international system in identifying and enforcing a universal, comprehensive set of human rights, pluralists maintain that progress can only be made if the state system is upheld. Jackson (2004) argues that the most effective form of international arrangement is a *societas* of states, in which sovereign states co-exist and benefit from the virtues of 'recognition, regard, restraint, reciprocity, reliability, amicability' (Jackson 2004:173) in their international relations with one another. The *societas*, according to Jackson, is the most basic yet articulate arrangement of international society that humans have come up with in recognition of their need to find a way to inhabit the world together whilst avoiding conflict and oppression. He claims that it is the most effective way to accommodate human diversity and protect the particular values of peoples whilst allowing them to enjoy political independence within a constitutionally safeguarded space (Jackson 2004:156-182). From this perspective, proper respect for human rights does not require the development of an illegitimate coalition, or the radical transformation of the organisation of the international system; but is to be facilitated by that system. Rather than seeking a comprehensive set of universal human rights which can then be codified to form the basis of a constitutional world order, theorists such as Jackson argue that a pluralist world order provides freedom for the nation state to protect the values, and consequently the human rights, of their citizens as they so choose.

Whilst cosmopolitan claims that the international system must be reformed in order to respect human rights are persuasive, when compared with the realities of the international system they appear utopian. Reforming the international system so that humanitarian intervention and other progressive norms could be legalised in order to adequately protect human rights would require the authorisation of the Security Council under article 108 of the UN Charter, yet gaining such authorisation is unlikely as this would involve states consensually surrendering their power, and potentially allowing themselves to be vulnerable to such interventionism. Such a conundrum represents the difficulties faced in attempting to reform the international system; whilst transformations may be beneficial in an ideal world it is not useful to abstractly theorise about such changes when they are simply unattainable. Furthermore, such reforms may have negative ramifications as it is not possible to predict the outcomes of legalising more permissive norms in a world where human rights are contested. Pluralist arguments that human rights can be properly respected through the state system are more convincing, not merely because they do not require radical reforms but also because they recognise the diversity of cultures and national systems which exist in the world and the potential for human rights to be properly respected within this system.

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