Basic Concepts of Human Rights and Development

Stephen P. Marks, Harvard University
Spencer Henson, University of Guelph

Thursday, July 5, 2018
10:30 am – 12:00 pm
The Rajagopal family cordially invites you and your family to the Bharatanatyam Rangapravesham (Classical Indian dance debut performance) of

Mekala Rajagopal
Disciple of Smt. Meena Telikicherla
Nrityanjali Inc., Gaithersburg, Maryland

ON
Saturday June 30th, 2018
7:00 pm (Seating at 6:30)

AT
Robert E. Parilla Performing Arts Center, Montgomery College
51 Manakee St., Rockville MD 20850

RSVP
mekaladance@gmail.com
by June 24th (regrets only)
I. Meaning of human rights
Review of human rights: norms and processes

Modes of discourse: What is human rights talk?

Origin and sources of human rights: Where do they really come from?

How do human rights norms emerge in international law and politics?

What can be done to move from norm-creation to norm-enforcement?
Human Rights: 
A Brief Introduction

Stephen P. Marks
Harvard University
“The invoking of human rights tends to come mostly from those who are concerned with changing the world rather than interpreting it...The colossal appeal of the idea of human rights [has provided comfort to those suffering] intense oppression or great misery, without having to wait for the theoretical air to clear.”

“Even though human rights can, and often do, inspire legislation, this is a further fact, rather than a constitutive characteristic of human rights.”
# Modes of human rights discourse: Does the Death Penalty Violate Human Rights?

<table>
<thead>
<tr>
<th>Mode of discourse</th>
<th>Example</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aspirational/advocacy</strong></td>
<td>“The death penalty is the ultimate denial of human rights” AI</td>
<td>Human rights activism</td>
</tr>
<tr>
<td><strong>Ethical/philosophical/religious</strong></td>
<td>Fails as deterrent, costly to the state and morally repugnant; required for security of citizens, rights of victims and moral law of retribution, Hud in the Qur’an</td>
<td>Ethics, values clarification, rights theory, theories of justice, religious doctrine</td>
</tr>
<tr>
<td><strong>Legal/political</strong></td>
<td>Not prohibited in UDHR or the ICCPR (life, torture), but 2d OP to ICCPR, Prot. 6 ECHR, Proto. ACHR, statute ICTR, ICTY, ICC</td>
<td>International human rights law, humanitarian law</td>
</tr>
</tbody>
</table>
“Still, though not radically ameliorative of here-and-now suffering, international human rights standards and norms empower peoples’ movements and conscientious policy-makers everywhere to question political practices. That, to my mind, is an inestimable potential of human rights language, not readily available in previous centuries. Human rights languages are perhaps all that we have to interrogate the barbarism of power, even when these remain inadequate to humanize fully the barbaric practices of politics.”
Natural and positive law

**Moral/Natural law**
- Authority from divine will or metaphysical absolutes
- Appeal to a higher authority against realities of naked power
- BUT no empirical basis of claim to permanence or universality

**Legal/Positive law**
- Authority from norm-creating process
- Content of rights empirically discoverable
- Appeals to formal agreement over subjective judgment
- BUT must rely on officials to implement, overlooks structural injustice
**Norm-creating process:**

From informal expression of concern to formal determination of human rights violation

<table>
<thead>
<tr>
<th>Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concern by NGOs and a limited number of government delegations</td>
</tr>
<tr>
<td>Lobbying for a resolution</td>
</tr>
<tr>
<td>Adoption of a resolution calling for a study</td>
</tr>
<tr>
<td>Completion of a study</td>
</tr>
<tr>
<td>Adoption of a resolution calling for a declaration</td>
</tr>
<tr>
<td>Drafting and adoption of a declaration</td>
</tr>
<tr>
<td>Adoption of a resolution calling for a convention</td>
</tr>
<tr>
<td>Drafting and adoption of a convention</td>
</tr>
<tr>
<td>Ratification and entry into force of the convention</td>
</tr>
<tr>
<td>Setting up of treaty-monitoring body which issues interpretations of obligations</td>
</tr>
<tr>
<td>Resolution calling for an optional protocol (OP) allowing for complaints</td>
</tr>
<tr>
<td>Drafting and adoption of an OP</td>
</tr>
<tr>
<td>Ratification and entry into force of the OP</td>
</tr>
<tr>
<td>Treaty body passing judgment on complaints</td>
</tr>
</tbody>
</table>
The international system in IR
Sovereignty

Exclusive jurisdiction to legislate, adjudicate and enforce within territory and over its permanent population.

Thomas Hobbes *Leviathan*, (1651),
• Charter, Article 2(1): The Organization is based on the principle of the sovereign equality of all its Members.

• Article 2(7): Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

• Article 1 (3): The Purposes of the United Nations are:...To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

• Articles 55-56: All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. [including] ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
Human rights as contradictory to sovereignty

- Human right law is “revolutionary because it contradicts the notion of national sovereignty—that is, that a state can do as it pleases in its own jurisdiction.” (Forsythe)

- But sovereignty has always been violated: “Westphalian and international legal sovereignty are best understood as examples of organized hypocrisy.” (Krasner p.24)
Richard Falk: “Responsible sovereignty”

• “Sovereignty can no longer be reduced to territoriality; it now includes elements of normatively (human rights, humane governance, human dignity) and functionality (nonterritorial centers of authority and control).”

• “Sovereignty ... needs to be conceptualized ... as deference to established governmental authority in a state and .. as a possible basis for endorsing or repudiating intervention ... to serv[e] humanitarian goals.”
NATURE OF THE INTERNATIONAL SYSTEM

Norms: rules governing what states and other actors can do

Processes: the structure of interactions among states and other entities

Actors: the individuals and entities that influence the outcomes
The International Trade Regime

**Norms:** National treatment, most-favored nation (MFN), reciprocity, etc.

**Institutions:** WTO, Min. Trade, TNCs

**Processes:** investment agreements, trade agreements, dispute settlement procedures
International human rights regime

- **Norms**: universal norms in UDHR, ICCPR, ICESCR; regional norms

- **Institutions**: OHCHR, IACHR, ECHR, AfCHR, SAs, INGOs, NHRIs

- **Processes**: standard-setting, investigation, adjudication, etc.
Five phases of socialization in PoHR

1. Repression
2. Denial
3. Tactical concession
4. Prescriptive Status
5. Rule-consistent behavior
I. Human Rights Systems

- UN Charter
- UDHR
- HRC
- ICCPR
- ICESCR
- CERD
- CEDAW
- CAT
- CRC
- CMW

Other International Instruments

Regional Regimes

National Protection Systems

Prepared by Action 2 Global Programme
OHCHR New York Office Development
Cooperation for United Nations System Staff College
### Regional Human Rights Systems

From: UN Common Learning package on the Human Rights-Based approach

<table>
<thead>
<tr>
<th>Instruments</th>
<th>Mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Europe:</strong></td>
<td>European Court of Human Rights,</td>
</tr>
<tr>
<td></td>
<td>European Committee on Social Rights</td>
</tr>
<tr>
<td></td>
<td>Inter-American Commission of HR</td>
</tr>
<tr>
<td></td>
<td>Inter-American Court of Human Rights</td>
</tr>
<tr>
<td><strong>Americas:</strong></td>
<td>African Commission on Human and People’s Rights</td>
</tr>
<tr>
<td></td>
<td>African Court on Human and People’s Rights</td>
</tr>
<tr>
<td><strong>Africa:</strong></td>
<td>Arab Expert Human Rights Committee</td>
</tr>
<tr>
<td></td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
</tr>
<tr>
<td><strong>Arab States:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ASEAN</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
II. Meaning of development
The Right to Development

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

Article 1.1 UN Declaration on the Right to Development
What is development?

"Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."

Preamble UN Declaration on the Right to Development
What is development?

"Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."

Preamble UN Declaration on the Right to Development
Is this development?

Indian GDP (US$ billions)
Is this development?
Is this development?

% global population living in extreme poverty

- 1800: 80%
- 1900: 40%
- 2000: 20%
Indian CO2 emissions per capita, 1960-2014
Is this development?

LEGAL SLAVERY
Countries where forced labor is legal or practised by the state (out of 195)

Sources: Gapminder[12], Pinker (2011), ILO[1-5] & SDL.
What is development?

- Development as process
- Development as outcomes
Development as process

- Economic, social and political restructuring
- Increased economic integration
- Growing formalization:
  - Organizationally
  - Legally
- Growth in productivity
- Growth in production and consumption
Development as process
Development as outcomes

- Economic growth
- Poverty
- Equality
Economic growth and development

• Economic growth reflects the growth in production and consumption of goods and services

• Consumption a key source of utility to consumers where utility is a reflection of self-assessed well-being

• Welfare measured in terms of utility

• Is this compatible with the concept of human rights?

• What about sustainability and intergenerational welfare?
What is poverty?

“A human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”

CESCR, 2001
What is poverty?

“A human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”

CESCR, 2001
Poverty as basic needs

• “’minimum essential levels’ of the rights to food, education and health.”

• “core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.”

• “the core obligations establish an international minimum threshold that all developmental policies should be designed to respect.”

CESCR, 2001
“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

   (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

   (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”
Multidimensional poverty index

- **Multidimensional Poverty Index (MPI)**
- **Dimensions**
  - Health: Nutrition, Child mortality
  - Education: Years of schooling, Children enrolled
  - Standard of living: Cooking fuel, Toilet, Water, Electricity, Floor, Assets

- **Poverty Measures**
  Multidimensional Poverty Index (MPI)
Alternative measures of poverty, 2016

India
Bangladesh
Pakistan

- Multidimensional poverty
- National poverty line
- $1.90 per day
Development as more than basic needs

- Poverty as a relative concept:
  - Social norms
  - Standard of living
  - Societal participation
- Importance of resilience
- Poverty in the context of inequality
Development as more than outcomes

• Human development

• Capabilities

• Happiness
Human Development

“Human Development is a process of enlarging people’s choices. The most critical ones are to lead a long and healthy life, to be educated, and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights, and self-respect.”

Capabilities

“The focus here is on the freedom that a person actually has to do this or be that – things that he or she may value doing or being.”

Sen (2009)
Development in practice

• Seen as deliberative and purposeful process

• Elaborated in terms of defined goals

• Requires measurement:
  • Definition of goals
  • Definition of indicators
  • Measurement of indicators

• Goals often include processes and outcomes
Sustainable Development Goals (SDGs)
Bringing human rights and development together

- Economic growth....?
- Poverty....?
- Basic needs....?
- Human development....?
- Capabilities....?