Book Review

Can We Still Afford Human Rights? Critical Reflections on Universality, Costs and Proliferation

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ABSTRACT

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At the end of a year in which the loudest screams of ‘freedom’ and ‘rights’ have seemed increasingly untethered from reality, comes a collection of essays which pose the question: has the mid-20th century experiment in universalism outlived its usefulness? This collection, the result of a conference held in 2018 to celebrate the 70th birthday of the Universal Declaration of Human Rights (‘UDHR’), poses thoughtful, albeit not completely reassuring, answers, to this frightening question.

The editors, all from KU Leuven University in Belgium, have brought together a range of European legal academics and practitioners to reflect on the central pillars of the human rights project. The first section of the book focuses on the compromises and complications of the universalism established in the UDHR and asks whether the time has come for a new global human rights treaty. The middle section considers the proliferation of human rights in the 21st century, circling around the issue of a hierarchy of rights. In a world in which new rights are endlessly contested, is there a danger that more ‘important’ rights are devalued? The final section of the book focuses on the costs of human rights—both the dangers inherent in failing to realise human rights fully, and the literal costs of development. The introduction persuasively makes the case for the interdependence of universalism, proliferation and costs as issues the human rights project must resolve if it is to flourish. Just as the introduction promises, these main themes crop up throughout the book rather than being rigidly segregated and this strengthens the overall argument. For instance, the main take-away from the section on universality, that it is time to replace the system of issue-specific treaties with a comprehensive human rights treaty, cannot be divorced from the problems raised by the proliferation of human rights nor the costs of denying them. Read as a whole, the collection provides a layered, nuanced and complicated picture of the human rights project in the 21st century.

Each section within the book follows the same structure; the first chapter sets out an overview and the central theoretical imperatives of the topic, followed by three chapters which gradually ‘zoom in’ on specific issues or problems within that topic. It’s a useful structure, making the content accessible to a broad audience, but it is undeniably a European-centric book with only two of the more narrowly-focused chapters examining issues outside of European jurisprudence.

The drafting of the UDHR in the absence of a common philosophical framework for the existence of human rights, while at the time a triumph of pragmatism and intent, has over the decades led to serious compromises and complications. The foundational flaw of the UDHR is that universal acceptance was only possible by omitting an enforcement mechanism. The schism highlighted in the 1940s, between societies keen to guarantee individual civil and political rights but wary of economic and social rights, and vice versa, has become both more entrenched and complicated. The editors use Kaplan’s definition of ‘thin’ and ‘thick’ societies (and communities within societies) to explain the human rights dilemma. Dramatic variations in implementation pose an existential threat to the sustainability of the universal human rights project. This has led to calls for a return to basics – a new minimalist global treaty focused only on the fundamental core rights to which all societies, both thick and thin, can agree, but this time attached to a robust enforcement mechanism. Nick Goetschalckx explores the ‘mythic’ qualities of universalism in his framing chapter. In chapter 3, Konstantinos Magliveras takes up this call, arguing for a new global treaty overseen by a single treaty body. In the following chapters, Paul Lemmens, Johan Lievens and Nele Verbrugghe complicate the possibilities of a singular treaty as they explore the operation of the ‘margin of appreciation’ in the European context. Could a single, global, treaty allowing for ideological differences between thick and thin societies/communities through a margin of appreciation, overseen by a new assembly of State Parties, protect the universalism of human rights, or would it simply reduce the rights protected while transposing existing problems onto the new framework?

The second section of the book focuses on the problems caused by the proliferation of human rights. The UDHR, an aspirational statement with no enforcement mechanism, has now led to a huge number of separate human rights treaties and optional protocols. While states have adopted these treaties according to preference, ratification of the treaties has not led to uniformity in terms of compliance. Indeed, this is one of the central arguments in favour of a new singular global treaty with an enforcement mechanism. And in addition to the system of UN rights, rights have also proliferated in regional systems such as in Europe, Africa and the Americas, meaning that there are now multiple levels of rights recognition and enforcement. As Kasey McCall-Smith notes in chapter 6,

the world is awash with human rights 'law'. More than this, the world has developed a vernacular to speak about human rights that transcends the legal forum. Unfortunately, as McCall-Smith argues, common use has led to slippage in the understanding and attempts to apply rights. Rights, intended to act as a protective framework for state-individual interactions, are now proclaimed casually, frequently and even flippantly outside this context. Even worse, the language of rights has become a weapon of disinformation, used to support violence and war. Dalia Palombo demonstrates another form of slippage in chapter 7, describing the resultant adoption of isolationism in protests against the transformative impulses of adjudicative bodies. Treaty bodies which have taken conservative treaties and, through expansive interpretation, given birth to second and third generation rights, have overseen, Palombo argues, a noticeable reduction in compliance in protest. This middle section of the book offers a thought-provoking analysis of the problems posed by the creative adaptation and expansion of rights discourse in a system ultimately enforced purely by state consent. Michelle Meulebrouck, focusing on trade agreements in the EU, and Louise Reyntjesns, examining the right to nationality in the EU (and its deprivation in the name of national security), flesh out these problems in specific European contexts.

The final third of the book is devoted to a consideration of the economic, social and political costs of human rights, or more accurately, the costs associated with a failure to realise the human rights project. Felipe Gómez Isa explores the historical shift from human rights development as an obstacle to economic efficiency, to human development as the primary driver of economic growth and more importantly, from economic growth being the most important

feature, to being a necessary but not sufficient condition for development. It is now clearly recognised by the UN that a significant part of public expenditure is devoted to delivering basic human rights; in an era of so-called austerity, when the legitimacy of raising taxation is being constantly challenged by conservative and populist governments, the relationship between economics and human rights is ever more central. Isa considers the theories of Sen, Nussbaum and UN experts while looking for criteria that would enable a rights-forwarding process of distribution of scarce resources, only to find that not only do none of these theories offer unambiguous solutions to the conflicts inherent in development projects, but also that each of these theories give different solutions. Fleshing out the impact of economics in the human rights arena are chapters by Dina Townsend and Nicky Broeckhoven (focused on development projects in Ethiopia) and Hillel Sommer (the impact of judicial activism on the right to health in Israel). In the final chapter of the book, Dima Yared focuses on gender equality and climate change to argue that the costs of human rights are massively outweighed by the transformative reality of the progress realised by their realisation.

In this way, the book comes to what I would describe as a Churchillian end – for all of the difficulties posed by the current articulation of the human rights project, for all of its limitations and failures, what other option is there? In the context of the immense challenges facing humanity, climate change, racism, technology and corruption to name but a few, the idea of the universality of equality first expressed in the UDHR remains as essential as it did at the birth of the United Nations. To the question 'can we still afford human rights?' the only answer is the rhetorical: How can we not?