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Political and Structural Impediments to Universal Human Rights

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With Specific Reference to Donnelly and Moravcsik, and Drawing on the Course Materials more broadly, what are the Principal Political and Structural Impediments to the International Human Rights Regime Fulfilling its Role as a Guarantor of Universal Human Rights?

Since the Second World War, human rights have emerged as a central tenet to international relations – characterised by some as ‘the most radical development in the whole history of international law’.^[1] In an international regime, such as that of human rights, international actors accept certain norms and decision-making procedures to regulate an issue area, while accepting certain constraints.^[2] Donnelly defines ‘the international human rights regime’ as the UN-centred regime, of which the most important statement of norms is the Universal Declaration of Human Rights of 1948.^[3] It is with these definitions in mind that the principal political and structural impediments to the international human rights regime fulfilling its role as a guarantor of universal human rights will be considered. The rights espoused by the UN broadly cover the realms of personal, legal, subsistence, economic, social, cultural and political rights and civil liberties.^[4] There are very few countries in the world who would challenge the accepted norms of human rights, but whether they are guaranteed is a different matter: Hafner-Burton conjectures that one-third of the world’s population live in countries that are both democratic and abusive of human rights.^[5] In order to consider why this may be, and what the impediments are, it is necessary to understand the idea of relinquished sovereignty as discussed by both Moravcsik and Donnelly, the realist approach broadly espoused in Donnelly’s 1986 article, the state-society approach of Moravcsik, and finally the constructivist approach to international human rights regimes.

Institutionalists would have it that states comply with human rights treaties because of the international institutions formed, such as the UN, providing low cost information. Meanwhile, repeated game theory shows that it is in state’s interest to comply in order to maintain their reputations.^[6] However, it is the relinquishing of power to these institutions that both Moravcsik and Donnelly suggest is one of the foremost impediments to the human rights regime. Before the emergence of the rhetoric of human rights after the Second World War, the Westphalian ideal of state sovereignty had dominated for three centuries. Thus, the empowerment of individual citizens to challenge the domestic activities of their governments and of external interferences in internal affairs came as a pronounced challenge to the status quo.^[7] There is a sovereignty costs for states to belong to an organisation such as the UN, as to establish an international authority is to allow constraints on its own domestic power.^[8] This is clearly a serious impediment to the international human rights regime fulfilling its role, if states are unwilling to compromise their own monopoly of power over their citizens. Meanwhile, the fact that human rights are a national and not an international issue means that states are the violators and the actors.^[9] Thus the regime is very hard to enforce. States are not willing to pay much in the way of diminished sovereignty in order to appreciate the benefits of cooperation.^[10]

This unwillingness of states to give up their sovereignty links with the second impediment that Moravcsik and Donnelly agree on: that the international human rights regime is foremost a declaratory regime, rather than an active one in imposing its principals. While policy coordination and information exchange may be sufficient to maintain a regime, a lack of potential for retaliation or accountability is an impediment to the role of the regime as a guarantor of human rights. For example, Donnelly suggests that compliance with the regime rests primarily on authority and acceptance rather than force, and therefore we are left with a relatively strong promotional regime that can have little

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effect in terms of decision-making or guaranteeing human rights across the world.^[11] Indeed, he goes as far as to suggest that states would resist any further growth than the steady evolution we have experienced towards strong promotional procedures.^[12] Likewise, Moravcsik concludes his article with the suggestion that 'pure idealism begets pure idealism' and for a more successful binding international commitment, more must be done.^[13] It is widely agreed that most states today do 'talk the talk' even if they do not 'walk the walk'.^[14] The explanations offered in the two articles diverge, however.

Donnelly's article emphasises criticism of the Human Rights Commission for not being able to investigate let alone remedy particular violations, and the fact that no actual investigation has ever been appointed. An interaction of supply and demand led to an enthusiastic reception of human rights rhetoric after the Nazi atrocities during the Second World War, but Donnelly suggests that states will only relinquish their own authority to obtain a significant benefit outside the grasp of separate national action or in order to avoid a burden. Thus, enthusiasm for the cause waned fast, perhaps as time blunted the emotional reaction to the Holocaust as well as revealing the merely verbal commitments of many states.^[15] This argument is in line with those of realists such as H. E. Carr and Hans Mearsheimer. These scholars agree that states will only comply with treaty obligations insofar as their security is not compromised and it is in their interest to do so. *Clausula rebus sic stantibus* is implicit in every treaty, so states repudiate a treaty when the international situation has changed as self-preservation overrides any legal obligation.^[16] Hence, Donnelly maintains, states will participate only to achieve national objectives, and the lack of any one force to coerce compliance is an impediment to the regime.^[17] Incentives for states to retaliate are low, given the national character of human rights issues, and retaliation is likely to be costly.^[18] For these reasons, there is need for an external power with the capacity to coerce in order for the human rights regime to guarantee universal human rights. These arguments are seemingly reflected in much of Obama's foreign policy, despite an improvement in the rhetoric of human rights. For example, he has downplayed the importance of human rights in China in favour of promoting trade, economic ties and diplomatic cooperation.^[19]

On the other hand, Moravcsik highlights the importance of domestic political identities with regards to state action, quoting the Kupchans' idea that states willing to submit to the rule of law and civil society are more likely to submit to their analogues internationally.^[20] Where national conceptions are compatible, there will be cooperation and compliance obligations of human rights regimes; where social identities are incompatible and create negative externalities, non-compliance is likely however.^[21] Nonetheless, despite an incentive to bolster 'democratic peace', according to this state-society approach, it is the well-established democracies along with the tyrannical regimes that oppose the regime. Well-established democracies thus prove an impediment to the guarantee of human rights because they are unwilling to tolerate the sovereignty costs of binding human rights agreements. Newly established democracies, on the other hand, will tolerate the costs in order to gain greater political certainty; 'locking in' policy for fear of backsliding into political tyranny. This is very clear in the reaction of the UK to the ECHR.^[22] Non-democratic regimes are also likely to impede the guarantee of human rights because any universal international list of human rights is likely to deviate further from the national traditions and practices of individual states.^[23] Thus, a country with less political uncertainty, and less need to think about constraining the behaviour of future national governments, could act as an impediment to the human rights regime because (as in the case of the UK) of threats to its own national idiosyncrasies.^[24]

Moravcsik and Donnelly seem to converge again on a certain acceptance of the theory of constructivism within their essays. The very definition of the human rights regime as a set of norms connects it with the constructivist idea of social structures being defined by shared understandings, expectations or knowledge. Constructivist theory stresses that ideas matter because power and interest do not have effects apart from the shared knowledge that constitutes them, and thus agency and interaction produce and reproduce structures of shared knowledge over time.^[25] The very challenging of the old norm of the Westphalian state with the growing global world is simply explained by constructivism, as we see the norms of politics change in such a short space of time. Donnelly explains that most governments that respect human rights have been formed (constructed) from the bottom up and that paternalistic solutions are never likely to be successful, domestically or internationally.^[26] The norms of human rights will be impeded in their development if they are not socially constructed. Similarly, Moravcsik previously articulated theory conveys the importance of small domestic actors in shaping greater domestic concerns.^[27] The scope and bias of political domestic representation has an impact on foreign policy, and changing bias changes the norms, as they are

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understood.^[28]

In conclusion, the international human rights regime faces much impediment as a guarantor of universal human rights. Well-established democracies may be opposed to losing sovereignty, while tyrannical regimes have no incentive to support. Meanwhile, accountability and retaliation is very difficult. However, it is important to consider that studies as to the effectiveness of the human rights regime vary hugely in their outcomes – depending largely upon whether they are conducting qualitatively or quantitatively. The broadly optimistic way of the qualitative genre has stimulated much international policy-making, activism and media discussion.^[29] Thus, the studies themselves and the way they are constructed feed the construction of norms and practices with regards to the human rights regime. The skepticism of the quantitative studies done by cross national statisticians contrasts with this. Ultimately, there is much missing data from countries and it is very hard to know how effective the human rights regime is.^[30] However, we do know that, while it is widely supported in its promotional capacity, states are slow to act or retaliate – and so, the guarantee of universal human rights is impeded greatly.

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^[1] Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organisation* 54 (2000) p. 218

^[2] Jack Donnelly, 'International Human Rights: A Regime Analysis', *International Organisation* 40 (1986) pp. 605 – 606

^[3] Ibid. p. 602

^[4] Ibid. p. 607

^[5] Emilie M. Hafner-Burton, 'Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes', *World Politics* 61 (2009) p. 372

^[6] Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: 2005) pp. 66 – 70

^[7]

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Moravcsik, 'The Origins of Human Rights Regimes' p. 218

^[8] Ibid. p. 219

^[9] Donnelly, 'International Human Rights' p. 616

^[10] Ibid. p. 619

^[11] Ibid.

^[12] Ibid. p. 639

^[13] Moravcsik, 'The Origins of Human Rights Regimes' p. 249

^[14] Hafner-Burton, 'Seeing Double' p. 368

^[15] Donnelly, 'International Human Rights' p. 612 – 616

^[16] H. E. Carr, *The Twenty Years' Crisis* (New York: 1996) pp. 182 – 184

^[17] Donnelly, 'International Human Rights' p. 616

^[18] Ibid. p. 619

^[19] Kenneth Roth, 'Empty Promises? Obama's Hesitant Embrace of Human Rights', *Foreign Affairs* (2010)

^[20] Moravcsik, 'The Origins of Human Rights Regimes' p. 223

^[21] Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics', *International Organisation* 51 (1997) pp. 526 – 528

^[22] Moravcsik, 'The Origins of Human Rights Regimes' pp. 228 – 230

^[23] Ibid. p. 227

^[24] Ibid. pp. 228, 240

^[25] Alexander Wendt, 'Constructing International Politics', *International Security* 20 (1995) pp. 73 – 75

^[26] Donnelly, 'International Human Rights' p. 617

^[27] Moravcsik, 'Taking Preferences Seriously'

^[28] Moravcsik, 'The Origins of Human Rights Regimes' p. 226

^[29] Hafner-Burton, 'Human Rights Impact' p. 36

^[30] Ibid. p. 380

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