

Article: The Legitimacy of Human Rights

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Readability: Moderate

Thesis: We should avoid a decontextualized understanding of human rights. International law should be understood as a process and as a discourse involving a complex array of actors, subjects, and venues. A process-based understanding of international-law will provide a conceptual starting point for context-based interpretations of universal norms.

Key Definitions:

- *Moral cosmopolitanism:* the view that each individual is worthy of equal moral concern and respect” (97).
- *Cultural cosmopolitanism:* the view that all cultures learn and borrow from one another and that we should be open to the multiplicity, variety and incongruity of the world’s cultures. Opposed to the Herderian view that cultures are coherent and centered wholes. Instead we should think of cultures as decentered, multiply situated and hybrid.
- *Legal cosmopolitanism:* shares with moral cosmopolitanism the view that everyone deserves equal moral respect and concern. But argues that such an attitude needs to be codified and actually translated into practice to ensure safety and equality for all individuals.
- *Substantive minimalism:* a kind of minimalism about human rights that concerns the content of human rights and the norms of global justice.
- *Justificatory minimalism:* a kind of minimalism about how to represent a concept of human rights as an essential element of global justice for an ethical pluralistic world.
- *Democratic iteration:* “a complex process of public argument, deliberation, and exchange — through which universalist rights claims are contested and contextualized, involved and revoked, posited and positioned — throughout legal and political institutions as well as in the associations of civil society” (98).
- *Demotic community:* formals citizens and residents of a jurisdictional system who are participants in democratic iterations.
- *Methodological holism:* when the constituent addressees of global public reason are identified as worldviews rather than peoples with complex histories and traditions

(Sort of) Brief Summary:

We can maybe divide the paper into three parts:

Part I.

The article opens with Benhabib highlighting some disagreements amongst philosophers and jurists about the nature and scope of human rights. The motivating question, according to

Benhabib, is what should count as a human right? A number of minimalist proposals are reviewed, but Benhabib thinks that we need to rethink the law of peoples against the backdrop of an emergent and fragile global civic society. The article then goes on to discuss three types of *cosmopolitanism: moral, cultural, and legal*. *Legal cosmopolitanism* seems to have an edge over *moral* and *cultural cosmopolitanism*, but it faces two objections. One, an objection from Arendt, is whether it makes sense to defend legal cosmopolitanism when to be a rights-bearing person means to be a member of a polity in which one's right to have rights is already protected. Two, how do we reconcile legal cosmopolitanism with the diversity of the world's governments without justifying either moral imperialism or moral indifference?

Part II.

Benhabib thinks the strategy for dealing with these problems is to better understand how legal norms function. She here introduces her notion of *democratic iterations*: a complex processes of argument, deliberation, and exchange throughout legal and political institutions as well as in the associations of civil society. Every iteration involves making sense of some originally authoritative text in a new and different context. The process concerns itself with the question of what decisions would be appropriate in light of a collectivity's moral and constitutional traditions and its international obligations to human rights. Through iterative acts a democratic people who consider themselves bound by certain guiding norms reappropriate and reinterpret those norms and become authors (not merely subjects) of the laws. Democratic iteration thus provides a "space of interpretation and intervention" where laws are variably resignified, enhanced, and transformed. It also mediates between a collectivity's institutional, context-dependent responsibility, and the context-transcending universal claims of human rights to which the collectivity is equally committed.

Through this notion of democratic iteration, then, we can account for variation and diversity in interpretation and implementation of basic human rights across different societies. But, as Benhabib notes, the legitimacy of this range of variation depends crucially on the principle of self-governance: "Only when this condition has been fulfilled, can we also say that there is legitimate 'unity and diversity' in human rights among well-ordered polities." Democratic self-governance, in this way, provides the essential context within which cosmopolitan norms assume moral principles are articulated.

Part III.

In the final part of the paper Benhabib turns to two objections against her position. First, doesn't her account pave the way for legal imperialism, since it bounds legal cosmopolitanism very tightly with democratic governance? Two, in appealing to civil society and the public sphere as the privileged arenas for norm-articulation and will-formation, hasn't Benhabib ignored the frequent cases of human rights abuses that require military intervention for their termination? Benhabib's response to the first objection is that it misidentifies the addressees of cosmopolitan discourse. Minimalist approaches that identify addressees of global public reason as worldview, rather than peoples with complex histories who ascribes to worldviews, flatten out the complex history of discourses and contestations within and among peoples. Benhabib's

response to the second objection is a little more wishy-washy. She says that one the whole she is opposed to the interventionism behind the formulation of the obligation to protect, and hopes that as long as necessary, we can depend on the forces of civil society to spread cosmopolitan norms. She does, however, think that in the cases of preventing genocide, slavery, and ethnic cleansing military intervention is justified. All in all, we need a new Law of Humanitarian Interventions that is clearer about the conditions under which the UN is justified to intervene in the affairs of a country.

Complimentary Texts:

- Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge, UK: Cambridge University Press, 2004) (see especially for elaboration of “democratic iterations”)
- Seyla Benhabib, *Dignity in Adversity: Human Rights in Turbulent Times* (Cambridge, UK: Polity, 2011)
- John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2001)
- John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971)
- United Nations, *The Universal Declaration of Human Rights*, <http://www.un.org/en/documents/udhr/>

Class Activities:

- This paper can help students who are already well-versed in international relations or political theory transition into thinking about related topics in political philosophy.
- Individual sections of this text can be broken up and paired with other readings to highlight their relevance to current issues in international politics and human rights law.
- Assign students, either in groups or individually, to write their own universal declaration of human rights. What would be included on the list? What would the justifications for these rights look like?
- Have students outline the argument in the paper by collaboratively writing a “low-tech Wikipedia page” on a large sheet of paper. Their page should include a summary, key sections/claims, important terms, and “hyperlinks” to other ideas and sources that the author is drawing on.