Andrew Bacrau

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*The Right to Defend Your Rights*

*The Fourth Branch of Government*

**Abstract**

 The evolution of human rights into a legal concern for the international system is both fascinating and problematic. Fortunately, this movement allows liberal cosmopolitans to stand for equality and the protection of individuals. These benefits however come at a cost: state sovereignty and the moral theory behind laws come into question. Our current domestic and international forms of legal administration are not enabled with tools to properly implement human rights from a legal perspective. I propose to solve these dilemmas by providing a new system of governance under which human rights are implemented as an aspect of international law. My thesis is that our political system requires to implement an extraneous institution into our body of federal governance. This institution will create a system of accountability between a state`s actions, human rights violations and international law. My first chapter will explore a philosophical interpretation of human rights and equality, which will further be analyzed from political optics. Chapter two will be concerned with the solution I provide, and the implications for our domestic and international systems of governance.

**Chapter 1- Political Philosophy and Human Rights**

1. **Ethical Framework**

 Before we even get the chance to discuss human rights themselves, I`d like to clarify my interpretation of the ethical theory used to support my further argumentation. Since everyone in the discourse (of our class) actively promotes/ or simply believes that human rights are good (and rather necessary), I will avoid the discussion of objectivism. Thus, I will provide my own interpretation of what objectivism should mean for ethics, and respectively for human rights.

 The premise behind human rights advocacies is that all humans are ontologically equal. The clearest definition of ontological equality is provided in Gould`s philosophy. She sees it as a duty to embrace each other as beings with equal ontological worth[[1]](#footnote-1). In order for us to achieve this ontological perception, we, the citizens, must be involved in a political discourse that enables us to participate in conversations that create public policy. Everyone has the right to participate in the fundamental interest (responsibility to protect), a human right to civic participation (RCP). The question then becomes how are these structural changes improve the ways in which there can be intelligent, ethical responses? Christiano defends the position that the only reason why we talk about human rights in the context of the law is because we perceive them as means to promote and protect “urgent moral goods”[[2]](#footnote-2).

1. **Methodology**

 Human rights by definition mean that they have to be universal, and enjoyed by everyone equally[[3]](#footnote-3). More so, human rights logically necessitate us to have access to them, by implying the following:

1. Individuals have a right to equal civic participation (RCP)
2. The political system has a moral obligation to create a system where 1 is possible

The reason I chose political optics for 2 is because human rights are the object of global justice[[4]](#footnote-4). Additionally, Nash takes a (moral) realist stance towards the mechanisms of achieving universal human rights. She not only believes that human rights can only be realized through states, but that human rights have first come into existence (pragmatically speaking) thanks to 20th century international diplomacy and the agenda(s) of hegemonic states of that time (respectively the US and UK). I tend to agree with her approach because I don`t see any way the universal human rights can exist without a legal justification. Therefore, we should approach human rights and RCP through a political framework, so we can also ensure the correct application and reinforcement thereof.

Secondly, we ought to take a closer look at the political optics themselves. Nash argues that when we look at how the discourse of human rights is applied in legal terms, we often see an institutional development that embraces human rights as well. I interpret international law as the fundamental theoretical basis for human rights. I believe that we should look at international law as a tool that:

1. Creates the umbrella of universal human rights.
2. Defines what these rights are.

The role of the institutions is to enforce international laws both at a micro (domestic, regional) and macro (intercontinental and global) political scale. However, this burden is shared with the other branches of government.

The issue with human rights (in application) is that it we are new to introducing applied ethics in legal theory. Scholars are unsure about whom does this “human rights burden” fall upon when looking at the duty of each institution/branch of government. In theory, the Supreme Court (and European models of a Constitutional Court) have to reinforce the constitutionality of their rule of law. The international system provides an extra layer to the question of constitutional reinforcement. As shown by the UDHR, there are now international expectations of a state`s behavior. In that case however, is it still the job of a domestic constitutional court to address issues of legal misinterpretation?

The international discourse of human rights adds an additional layer of complexity to the question of state sovereignty. Since the Westphalian system, we began to ask questions concerning the role of the state in an international federalist system[[5]](#footnote-5). Nash further labels the interaction between human rights and state governments as *intermestic*: “legal claims to human rights which draw on international law in national courts disrupt and sometimes re-configure jurisdictional borders between the international and the domestic from within states”.

1. **Rights Issues in the Present**

Recently the Senate has released a document regarding CIA operations post 9/11[[6]](#footnote-6). The document recorded a worrisome amount of behaviors performed by U.S. actors that are considered unethical. The Senate report mentions the usage of various forms of torture, and the release of the document has caused political turmoil in the international arena. CNN reports discuss how even North Korea and Iran consider these forms of bodily harm as a violation of international law, and most importantly a form of human rights abuse. The people should have a right to influence the way the United States Federal Government (USFG) conducts its operations. I argue for the promotion of a political environment where the civil society can hold accountable the USFG for the crimes it has committed. Otherwise, I`d say that we don`t fully get the chance to exercise our RCP. Even though people could disagree with the rationale behind USFG actors using torture and its ethical implications, there are two things worth discussing:

1. Torture is a violation of international law[[7]](#footnote-7).
2. We are forced to tackle questions of governmental transparency.

Not even apologetics would deny the truth of the previous two observations. I stand for a political system that enables people via civic participation to communicate their concerns in an institutionalized manner so that we get the proper legislative authority. As previously highlighted, the best way for us to ensure and enjoy human rights is via an institutionalist/legal response. At this point in the debate, we have to recognize that there is a gap between what current governments can do, and what is legally/morally acceptable. More importantly, we should echo this concern so that we can continue to strive for the development of a peaceful society that creates ethical responses to our policy issues. As Brown frames it, the question of including moral theory in policy debates has been considered inferior, resulting in the exclusion thereof. Although true, I believe that we should have a paradigm shift that also includes moral theory. We live in a world where our ethical theories are far more advanced than the normative advocacies behind our legal framework. Considering all the current violations of human rights, we should look into solutions that incorporate sophisticated human rights paradigms into our rule of law. Thus far, I have shown the following:

1. States are responsible for human rights violations
2. Institutions and the law solve for this issue
3. Moral theory is excluded out of the public policy discourse
4. We require systemic change in order to fully mitigate violations of human rights

The question now becomes whether the solution should just be an improvement of our existing system, or if we need a solution more extraneous to our governmental structure. Considering that the White House officials did know about these reports prior to the Senate release[[8]](#footnote-8), gives us a reason to believe that simply fixing current governmental structures might not be the correct way to approach systemic change. The lack of transparency has been an ongoing issue in our political system, and officials fail to respect human rights and international law. Secondly, I`d like you to recall the questions that we have today concerning the definition of a state. After considering Nash`s observation on *intermestic* rights, we have to ask questions in regards to the legal and cultural side of human rights once again.

Corradetti`s criticism of our current political system in relation to democratic thought is worth considering. He argues that abstract universalism is not as attractive as most people make it to seem because it can`t provide legitimacy to cultural moral claims[[9]](#footnote-9). Nash also agrees with Corradetti`s issues on universalism. She furthers the debate by demonstrating a parallel between our concept of culture and politics. The discussion takes a significant turn when Nash goes as far as saying that politics cannot be realized without a concept of culture to begin with. Both authors seem to agree that if our (legal) implementation of human rights isn`t culturally sensitive, then human rights would fail to fulfill their purpose. If our human rights theory is supposed to be universal in the sense that they should apply to everyone equally, but on the second hand we have to also embrace a world where a notion of cultural pluralism exists, then how are human rights supposed to serve as a bridge between equality and relativism?

Social theorists must create a model where we find a balance between social justice and cultural discrepancies. I believe the key to this dilemma is to take a closer look at what relativism could mean in this instance. A popular question for relativists tends to address the definition itself: “relative to what?” we may ask. Corradetti`s model of universal pluralism seems to answer this question. His perception of what cultural differences are leads him to believe that these are simply a plurality of interpretations towards human rights. Therefore, we should look at relativism and universal equality in terms of the token/type model. Corradetti argues that ‘reasonable pluralism is a necessity in a truly democratic state’ (p.142). His solution is a proposal of a model which, is supposed to promote and foster international law. Secondly, Corradetti`s vision mentions that we will only understand human rights and pluralism correctly once people will be able to exercise their freedom of expression. I support Corradetti`s philosophy because it is a good interpretation of what I would call the right to civic participation: a mechanism by which people can express their views on human rights at the level of international law. Social theorists must recognize the status of human rights in the present: although they do exist in some sense, the legal concept of human rights does not hold too much ground. Our solutions must contain a mechanism by which human rights are correctly enforced. For that, a bridge must be created between people`s ability to express their human rights views, state accountability and the international legal system. I will further argue that this bridge must involve institutional action and a new understanding in regards to the role of states in the 21st century.

**IV. Justifications for Systemic Change**

 A significant step that must be made before offering the solution itself is to offer an updated interpretation of what a state should be. Currently, states fail to respect international law, and the citizens do not have any legislative authority to prevent the state from committing the crime. We can also infer that once a state commits a human rights violation, the citizens themselves cannot hold the state accountable to the normative standards of international law.

 Secondly, a new definition of a state must address questions of sovereignty. Since Nuremberg, the legislative authority of states has been decaying due to a power transfer to the international system[[10]](#footnote-10). Therefore, we should analyze the extent to which the international legislative umbrella should influence a state`s actions. I provide the following observations:

1. We recognize human rights as the means of achieving international justice
2. International justice is granted by the influence of international law over state law
3. In order for international law to succeed over state influence, international law must have legislative authority over states
4. Therefore, we achieve international justice when international law can hold every state accountable for human rights violations
5. Law is best enforced when there is an institution that revolves around recognizing violations of the law (courts-containing bodies of lawyers, bureaucrats etc.)
6. In conclusion, we need an institution that holds states accountable for violations of human rights.

**Chapter 2- An Intermestic Institutional Framework for Human Rights**

1. **Domestic Model: The 4th Branch of Government**

Thus far, I have shown you that the solution would require an institutional establishment, alongside with a mechanism to allow citizens to participate in the discourse equally (in a culturally sensible manner of course). Nash stresses that human rights must first be normalized within states-societies. I believe we can achieve this “normalization” she speaks of by institutionalizing a 4th branch a government within current democratic regimes. The idea has come to me in light of the evidence showing that we need to hold states accountable for their human rights abuse. Alas, the role of the 4th branch of government will be to hold the rest of the federal body within check when it comes to human rights cases. The bureaucratic mechanism proposed to enforce the institutional authority is a veto from the 4th branch itself: the people. We should understand the 4th branch as a federal institution that behaves in reaction to human rights abuses by either the presidency, judiciary and/ or legislative branch. This reactionary ability should be a reactionary veto created by a referendum. A referendum orchestrated by the 4th branch will decide whether or not a state is guilty of a human rights violation. If states would be declared guilty, then the international legal system should punish the political figures guilty of the human rights abuse. The model will be illustrated in the following example:

Let`s say that a police officer took the irrational decision to shoot a civilian (probably on ground of racial profiling). By taking that action, the police officer (a governmental bureaucrat) has violated a civilian`s fundamental right to life. Additionally, the Supreme Court would decide that the police officer has not violated a human right; as a result, the police officer would surpass international law, hence the police officer becomes in a state of violating global justice. If any body of state governance would ever find such a state acceptable, then the state itself must suffer legal consequences.

In this scenario, the 4th branch would organize a referendum: the people will have to vote on whether or not they believe that the state has violated one of their human rights granted by international law. If the state does end up being guilty for human rights violations, they should suffer legal consequences (such as impeachment). There are two main counterarguments that I`d have to answer before I ensure that the process is legitimate:

1. What if the 4th branch launches a referendum when states don`t commit a human rights violation, but simply want the state to get in legal issue with international law?
2. How will you ensure that international law is enough of a deterrent to improve the state`s behavior in the future?

I provide the following answers:

1. What makes human rights special, as Nash puts it, is that they win hearts and minds. The philosophy of human rights themselves act as a catalyst for social change because the message of them is so powerful. They simply push for the idea that all men and women have equal worth, and the idea seems to be persuadable.
2. The international community can easily deter a state`s behavior in the status quo. A state`s membership comes with terms and conditions, and if they fail to respect international law, they will suffer a backlash from the international community through economics. The state at fault would be under international pressure to impeach the figures responsible for the human rights violation(s).

We now have the definition of what a state should be: a median between international law and its national citizens. The state`s most fundamental role is to ensure the preservation and, enjoyment of the human rights provided by international law. The state exists because the people want it to exist, and the members of the state should follow consequences if they disobey human rights in the process of creating policy (either foreign or domestic). Our current policy process is linear, exemplified in the following diagram:

Linear Federalism: International law human rights National Regimes public policy people

 Under the model of the 4th branch of government, the relationship changes between a linear one to a triangular one:

Triangular Federalism:

 International Law

 4th branch of government National regimes

1. **International Implications: Continental Superstates**

The European Union is the best example of what superstates are supposed to be: an intra-regional, continental body of governance that provides laws to its member states, as well as economic plans and a cultural aspect of “continental membership” – as evidenced by the idea of euro citizenship and the “we are all Europeans” movement. The reason why we need these intra-regional political alliances is because we have to introduce human rights in a culturally sensible way. These superstates fulfill Corradetti`s vision of universal pluralism. We allow international law to be universal in so far as it applies to everyone, however the interpretations of how these human rights should be implemented, becomes a burden that falls upon superstates and national regimes.

The role of the superstates is to “culturaize” the human rights discourse proposed by international law. The superstates are supposed to unify the affiliated countries within a framework of cultural unity. Therefore, we should have intraregional systems of governance similar to the EU in North and South America, Africa, Asia and the Pacific. I recognize that due to some cultural misunderstandings, there couldn`t be an “Asian Union” or an “African Union” *per se*. South-eastern Asians might have an overall different culture from East Asians. Since the role of these superstates is to culturally unify these states and give them an identity under the eyes of international law, then these superstates might have to be subdivided in some continents. Similarly to the domestic model of policy management, we observe a linear relationship in the status quo. My international model changes these policy relationships into a circular federalist model:

 International Law

 4th Branch of Government Superstates

 Member states

**Conclusion**

 Human rights have become a symbol for international justice. They have helped us understand a deeper connection between people, and they helped us understand that we require a unitary system of governance under which, we are all considered equal citizens. Currently, human rights face the issue of lack of implementation. The international system and national governments have been struggling with both the theory and application of human rights. My solution, the 4th branch of government attempts to create the systemic change necessary for human rights to flourish in the future. The 4th branch of government is solving today`s human rights issues because:

1. Redefines what the state should mean and do in relation to human rights
2. It creates a legal and institutional framework for human rights
3. The 4th branch contributes to the protection of human rights and international law
4. Keeps states accountable to international law and their citizens
5. Allows citizens to participate equally

 It is finally time for moral theory to be included in international law. There are some necessary steps of development in the process, and even achieving the 4th branch of government seems like an ambitious goal for our current political system. We require further research to understand the extent to which international activist movements and globalization influence our awareness and normative acceptance of human rights. On the bright side, authors such as Corradetti and Nash give us reasons to believe that human rights are slowly becoming a significant issue when looking at normative public policy and the international system. As Brown argues, the Nuremberg trials were a significant step towards an international sentiment of intolerance towards irrational violence and human rights abuses. Institutions and democratic states have been an important contributor to the development of the human rights discourse, and ideally they will continue to support such movements in the future.

Bibliography

Baker, Peter *Bush Team Approved C.I.A. tactics, but Was Kept in Dark on Details, Report Says*, New York Times, Dec. 9 2014

Brown, Chris “Sovereignty, Rights and Justice- international Political Theory Today” Polity Press 2002

Christiano, Thomas (p. 302-327) “An egalitarian argument for a human right to democracy” in Holder, Cindy and Reidy, David “Human Rights the Hard Questions” Cambridge Press 2014

Churchill, Robert Paul “Human Rights and Global Diversity” by Pearson Education, 2006 (p. 10-11)

Corradetti, Claudio: *What Does Cultural Difference Require of Human Rights?* (p. 138-146) in Holder, Cindy and Reidy, David “Human Rights- The Hard Questions” Cambridge Press 2014

Gould, Carol “The human right to democracy and its global import” (p. 285-301) in Holder, Cindy and Reidy, David “Human Rights the Hard Questions” Cambridge Press 2014

Miller, Greg et al. “Senate report on CIA program details brutality, dishonesty” Washington Post, December 9th 2014 www.huffingtonpost.com/2014/12/09/senate-torture-report-details\_n\_6295396.html

Nash, Kate “The Cultural Politics of Human Rights –Comparing the US and UK” Cambridge Press 2009 (p.2-188)

O`Neil, John: *Value, Justice, and the Wilderness ideal* in Sheehan, Paul: *Becoming Human- New Perspectives on the Inhuman Condition*, Praeger Publishers 2003

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

1. Gould, Carol “The human right to democracy and its global import” (p. 285-301) in Holder, Cindy and Reidy, David “Human Rights- The Hard Questions” Cambridge Press 2014 [↑](#footnote-ref-1)
2. Christiano, Thomas (p. 302-327) “An egalitarian argument for a human right to democracy” in Holder, Cindy and Reidy, David “Human Rights- The Hard Questions” Cambridge Press 2014 [↑](#footnote-ref-2)
3. Churchill, Robert Paul “Human Rights and Global Diversity” by Pearson Education, 2006 (p. 10-11) [↑](#footnote-ref-3)
4. Nash, Kate “The Cultural Politics of Human Rights –Comparing the US and UK” Cambridge Press 2009 (p.2-188) [↑](#footnote-ref-4)
5. Brown, Chris “Sovereignty, Rights and Justice- international Political Theory Today” Polity Press 2002 [↑](#footnote-ref-5)
6. Miller, Greg et al. “Senate report on CIA program details brutality, dishonesty” Washington Post, December 9th 2014 www.huffingtonpost.com/2014/12/09/senate-torture-report-details\_n\_6295396.html [↑](#footnote-ref-6)
7. UDHR, Article 5 [↑](#footnote-ref-7)
8. Baker, Peter *Bush Team Approved C.I.A. tactics, but Was Kept in Dark on Details, Report Says*, New York Times, Dec. 9 2014 [↑](#footnote-ref-8)
9. Corradetti, Claudio: *What Does Cultural Difference Require of Human Rights?* (p. 138-146) in Holder, Cindy and Reidy, David “Human Rights- The Hard Questions” Cambridge Press 2014 [↑](#footnote-ref-9)
10. O`Neil, John: *Value, Justice, and the Wilderness ideal* in Sheehan, Paul: *Becoming Human- New Perspectives on the Inhuman Condition*, Praeger Publishers 2003 [↑](#footnote-ref-10)