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POLI 301: Implementing Human Rights

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It is commonly believed that the language of human rights materialized during European Enlightenment, when thoughts about natural law inspired individuals to publicly express demands concerning their civil liberties. The moral arrangements outlined in some of this literature began as objective rights which eventually manifested in the form of rights declarations in the hopes of minimizing the opportunity for despotic leadership to occur (Goodhart, 2016). However, modern examples of official human rights documents that followed WWII are considerably more liberal in content, inviting many criticisms from those who have taken offense to the particularity of the language embedded into these statements (Goodhart, 2016). Ironically, it is the universality of these modern human rights declarations that arguably cause the most controversy between political groups that measure these moral expectations from differing cultural perspectives.

These clashing viewpoints have managed to stall human rights progress both nationally and internationally while indirectly repressing those who need their rights most of all. Instead of giving states the freedom to pick and choose the rights they will and will not allow their citizens, international systems of governance must be more precise about expectations concerning civil liberties. Levels of freedom experienced my marginalized groups and the ratification of core human rights' treaties, play a central role in maintaining indivisibility concerning human rights protection. Moreover, if international law can be successful in the implementation of universal human rights standards that cannot easily be divided by ruling political powers, there is a chance that modern society may avoid experiencing the slow reconstruction of civil society all over again.

Given that the Universal Declaration of Human Rights (UDHR) has played a central role

in shaping modern global expectations pertaining to human rights, it is important to not only understand how the content is perceived by opposing cultures but also the context for which the drafting of this document took place. Following the adoption of the UDHR in 1948, it was originally understood that one treaty of covenants would define the new postwar human rights regime, uniting civil rights in a way that could potentially support a universal understanding of these liberties (Therien & Joly, 2014). However, what ended up occurring, had very counterproductive effects that not only lessened the value of the UDHR but also ignited widespread mistrust for the United Nations (UN) held by nations that may have otherwise benefit from the declaration. Civil, political, social, economic, and cultural rights were detrimentally divided into two separate treaties, recklessly supporting unhealthy competition that already existed between great powers. Perhaps even more disturbing is the concept that this division was intentionally planned by the Human Rights Commission (HRC) conducive to Western ideals that may have taken an upper hand in these political agreements at the time (Goodhart, 2016).

The injustices that remain with respect to the separation of core human rights conventions lies in the fact that implementation of civil and political versus social, economic, and cultural rights have very differing impacts on how civil society can truly realize and enjoy them. It has been pointed out by many analysts that some of these rights require far more proactive commitment from governments than others do, leading to large-scale controversy between opposing forces that are quick to draw light on the exploitation that occurs in result of these shortcomings. Theorists who have challenged the normative constitution of these rights have encouraged the international community to question the difference in effort it takes for a government to apply these standards. This debate is supported by evidence that separates "positive" and "negative" rights, weighing in on the idea that much more effort is required by governments to provide protection of social, economic and cultural rights as opposed to civil and political rights which can be passively achieved via political regimes merely abstaining from doing things considered to be an infraction of the right at issue (Goodhart, 2016).

Rightfully, there were some groups that held very doubtful beliefs about the true motivations of the UN, the universality of human rights protections and the sincerity behind the

newly proposed commitments. The separate acknowledgement of the rights of women over thirty years into the development of the UN also inspired mixed interpretations of what these new freedoms implied. Some onlookers who viewed this action from a critical perspective thought the separation of these rights had detrimental effects on women gaining equality, believing that this division further enforced the concept that the rights of men were universal compared to the rights of women (Johnstone, 2006). In 1995 these arguments were acknowledged by the UN and member states at the Fourth World Conference on Women in Beijing, promising to equalize their pledge to human rights by not separating women's concerns within their work, which some believed to further marginalize this group. As gender mainstreaming continues to influence leaders shaping international human rights law, hopefully more equality can be experienced by citizens whose happiness and freedom remain dependent on these rights being recognized equally.

Complex historical events during colonization that severed trust between Indigenous Peoples and Western law makers made a dominant impact on how human rights are currently understood and experienced by citizens around the world. These historical establishments make it critical the Indigenous Perspective is understood so one can fairly assess modern human rights agreements and their perceived benefit to modern societies. In 2007, the United Nations General Assembly adopted The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), finally acknowledging the need for this group to have fair input in domestic and international legal environments. The main concepts introduced into the UN by UNDRIP has been the recognition of collective rights in relation to individual rights, the right to self-determination, solidarity rights and the free prior informed consent necessary for fair legal deliberations to take place by countries making decisions which impact Indigenous Peoples (Isa, 2019). Hopefully in time, it will be very evident to society how worthwhile it can be when global systems of governance make an honest and concerted effort to include the distinctive needs of all minorities in their platforms that impact levels of freedom felt and experienced by everyone.

The very idea of reservations on core human rights treaties inspires onlookers to question the intention of state actors engaging in international agreements of this magnitude. Some

researchers have followed these deliberations closely, examining the consequences of various legal submissions made by UN member states. From a liberal perspective, reservations are a harmful option for member states to exercise and hope developed democracies will make the fewest reservations in the interest of setting an example for less developed countries to follow (Tyc, Janku & Sipulova, 2014). However, because of competitive forces guiding international systems, many states do not conform easily to these expectations presumably due to the complicated nature of political agreements and the emotions embedded into the variety of aspects built into such arrangements. Some researches make a distinction between internal and external factors when analyzing a states' willingness to ratify a treaty in question. Rational theory pinpoints factors that prevent treaty ratification from being an effective way to measure a countries' compliance with human rights freedoms due to control mechanisms that inhibit the success of these agreements. This theory assumes a states' existing political regime greatly influences the extent to which that nation is willing to ratify a treaty and that more effective enforcement is needed in furtherance of these agreements being accepted by unwilling member states (Tyc *et. al,* 2014). Internal factors include mainly socially derived variables that impact state commitments to international human rights law. Arguably, since many contrasting ideologies exist within systems of global governance, beliefs inspired by realism and liberalism further complicate the process of ratification. While liberalism reinforces the opinion that international law maintains an influential role in shaping the international community, realism opposes this perspective, holding strong to the belief that state sovereignty ultimately dictates state decisions to ratify or not ratify human rights treaties (Tyc *et. al,* 2019). Furthermore, from an outsiders' perspective it may appear that since there is no actual repercussion when a nation does not choose to ratify one of the core treaties, the UN is unintentionally reinforcing a widespread social understanding that it is merely okay to deny some citizens some of these basic human rights.

While some may be impressed by the rate at which human rights progress has developed during their current lifetime, there are some individuals still waiting to understand what freedoms they will be allowed by authoritative figures who are in control these liberties. The concept of

universality in human rights discourse remains somewhat meaningless if individuals are being consciously or subconsciously repressed by those closest to them. Considering the recent progress concerning the rights of Indigenous Peoples and gender mainstreaming, it may be a good time to for society to withhold harsh critiques about the deficiencies rooted in international law. Furthermore, simply being aware of the different ways in which individuals and groups conceptualize the world around them is crucial in the progress of human rights, particularly when examining the success of recent agreements such as UNDRIP.

Given the immeasurable ways humans analyze their individual political environments combined with the fast-paced influences of media technology, it is likely helpful if citizens remain sensitive to differences in how people express or do not express their political opinions during a time when human rights' freedoms have arguably the best chance in history take hold internationally. If the UN can understand how their expressed notion of universality undermines the intent of international human rights instruments and see how repressed citizens may be taking offense to these assertions, perhaps a more indivisible understanding of civil rights and freedoms will arise from the framework encouraging more inclusive commitment to universally accepted human rights standards.

References

Goodhart, M. (2016) Human Rights: Politics and Practice (3rd Ed.) Oxford, UK: Oxford
University Press.

Isa, F. (2019) The UNDRIP: an increasingly robust legal parameter. *The International Journal of Human Rights.* (23) pp. 1-21. Retrieved from
https://doi.org/10.1080/13642987.2019.1568994

Johnstone, R. (2006) Feminist Influences on the United Nations Human Rights Treaty Bodies.
Human Rights Quarterly. (28) pp. 148-185. Retrieved from
https://doi.org/10.1353/hrq.2006.0005

Tyc, V., Janku, L., Sipulova, K. (2014). Reservations on Human Rights Treaties: A Case Study
on the Practice of Czechoslovakia and Its Successor States. *International Community Law Review.* (16) pp. 371-398. DOI: 10.1163/18719732-12341285