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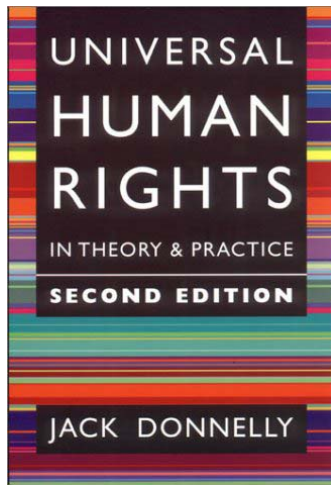
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## Affirming Universal Human Rights

By Richard Falk

**Universal Human Rights in Theory and Practice (Second Edition)** by Jack Donnelly. Ithaca, NY: Cornell University Press, 2003. 290 pp.

It is notable how few books in the social sciences, aside from those written for classroom use as texts, achieve a second edition. It is partly a reflection of authors devoting their attention to substantive issues that, for better and worse, do not have a sufficient historicity to warrant the trouble and expense of substantial revision. Beyond this there are very few scholarly treatments of important themes in political science that have the intellectual depth, clarity, and coherence that make their “second coming” a worthwhile enough academic event to warrant publication, and even fewer that receive a second wave of assessments in the form of book reviews.

Happily, Jack Donnelly’s Universal Human Rights in Theory and Practice is such an exceptional study of a specific topic that it benefits substantively from a second edition, and is of such scholarly stature in the field, that it easily justifies renewed critical scrutiny, both to discern the evolution of Donnelly’s understanding of human rights, and to reflect upon the contributions and shortcomings of his approach. The good news is that the second edition is somewhat more comprehensive in its coverage than the first, and what is even better, is somewhat more reader friendly, perhaps because of its more colorful format, but mainly due to its more stimulating arrangement of chapters and topics. As Donnelly correctly points out the essential argument and approach remains unchanged, and the book is still the best starting place for any serious study of human rights, a subject that has attracted greatly increased academic and public interest since the first edition appeared in 1989.

What Donnelly does better than anyone else is to lay before the reader a coherent conceptual framework for an understanding of international human rights as an operative part of international life. Donnelly, as the title underscores, sets out, above all else, to defend the universality of human rights, as against those who carp at its allegedly Western bias and those who insist that human rights need to be primarily understood in light of a series of distinctive cultural perspectives. In fact, one of the notable features of the second edition is its greatly increased focus on the controversy about cultural relativism in the setting of human rights, with special attention to a nuanced refutation of the supposed relevance of Islamic and Asian values, which allows some interpretative space for cultural variations without jeopardizing the overall universality of the enterprise.

Donnelly's position is universalist, yet sensitive to cultural claims. In his somewhat ambiguous words, "I will defend a weak cultural relativist (strong universalist) position that permits deviations from international human rights norms primarily at the level of form or implementation" (90). Underneath this affirmation is Donnelly's strong belief that the Universal Declaration of Human Rights (UDHR) embodies a genuine substantive consensus that encompasses the leading world cultures, arguing in effect, that there are no crucial issues of substantive difference. There exists what Donnelly, following John Rawls, describes as a "realistic utopia," an "overlapping consensus" as to norms that lends validity to claims of universality associated with the UDHR. In further support of this position Donnelly writes, "[I]n twenty years of working with issues of cultural relativism, I have developed a simple test that I pose to skeptical audiences. Which rights in the Universal Declaration, I ask, does your society or culture reject? Rarely has a single full right (other than the right to private property) been rejected. Never has it been suggested to me that as many as four should be eliminated" (94).

Another important feature of the Donnelly approach is its sophisticated familiarity with relevant political theory and philosophic background. And it is more than a sense of Locke, Hegel, and Kant as the crucial articulators of rights and Hobbes as the reminder of the realities of sovereign authority in an anarchical global order lacking governmental institutions. Donnelly is alert to the contributions of such thinkers as Gramsci, Habermas, Rawls, and Amy Gutman to the kind of understanding that he seeks to impart to readers. Perhaps, his most startling claim is to assert that "[h]uman rights have become internationally 'hegemonic' in a Gramscian sense of the term" (40), a claim repeated in various points in the text. Michael Ignatieff, arguing along somewhat parallel lines, puts this primacy of human rights in a comparable rhetoric: "Human rights has become the major article of faith of a secular culture that fears it believes in nothing else. It has become the lingua franca of global moral thought, as English has become the lingua franca of the global economy" (Ignatieff 2001: 53). It was also my experience three years ago on Cyprus when participating in a conference of religious leaders from the three monotheistic faiths, including a strong clerical presence from Iran, that there was no dissent from the view that the best grounding for conducting such an intercivilizational dialogue was the human rights discourse, and specifically, the UDHR.

In important respects, Donnelly and Ignatieff make an intriguing duo, agreeing on matters of perspectives and liberal orientation with regard to human rights, Donnelly providing the academic community with an authoritative statement, and Ignatieff, although academically connected, communicating with a wider general audience, usually as a quality journalist. Both are explicitly anti-foundational, refusing to ground human rights in metaphysical principles of truth and reality, but rather accept as validation the existential evidence of shared belief in what is right and wrong. Both are political realists, recognizing that arguments of human rights are not likely to prevail if perceived as being in conflict with the strategic goals of foreign policy. And both maintain strongly that the implementation of human rights depends overwhelmingly on national institutions of government. Neither is bothered by the Western origins of the human rights movement, nor by the contentions of non-Westerners that their values are not taken sufficiently into account. In this political sense, Donnelly and Ignatieff represent a Western mainstream approach to human rights, encouraging governments, especially the US Government, to grasp more clearly their own pragmatic interests in the overseas spread of human rights norms. Neither is sharply critical of governments, nor strongly appreciative of the historic roles of civil society actors in advancing the cause of human rights in a variety of settings. It is notable that nowhere in this book does Donnelly allude to the historic role

played by such civil society actors as Amnesty International and Human Rights Watch in making human rights a serious political project.

In the end, Donnelly may be more of a traditionalist and legalist than Ignatieff, conceiving of human rights as the normative architecture embodied in the UDHR, the Covenants, and subsequent international treaty instruments specifically concerned with human rights norms. Donnelly does not accord attention to what I would describe as the wider agenda of human rights that became so prominent in the 1990s, including matters of international criminal accountability, humanitarian intervention, and international humanitarian law. Ignatieff does address these issues as if they were constituent elements in the evolving subject-matter of human rights. I find this narrower, more traditional, delineation of the field of human rights less rewarding than the broader conceptualizations that tended to appear in the 1990s.<sup>1</sup> This is so because the concern of human rights, the protection of those vulnerable to abuse and avoidable suffering, cannot be meaningfully separated from efforts by international society to exercise some sort of responsibility for rescuing peoples caught up in an imminent or unfolding humanitarian catastrophe; or those victimized by wartime or its aftermath; or in relation to procedures designed to impose criminal accountability on political leaders for past human rights abuses or at least to record the abuses of the past via a truth and reconciliation commission. I would hope that Jack Donnelly will reconsider these claims for an enlarged scope for his third edition, or if he seeks to maintain the conceptual focus of this volume under review, then to undertake a companion book that engages the issues of the wider agenda. It would be an invaluable addition to his already major contribution to our understanding of human rights.

Part of what makes Universal Human Rights such a work of academic excellence is the extent to which each sentence imparts the sense of being carefully wrought and fully considered. There is a density of thought present in most social science works of enduring value that undergraduate students usually find daunting and the better graduate students read with awed appreciation. Although Donnelly is not a stylist in the sense of being a stylish writer in the manner of Ignatieff, he is a master craftsman whose thought and analysis gives the impression of having been multiply tested in the crucibles of self-criticism and professional dialogue. It is this quality, difficult to pin down any further, that makes Donnelly's voice seem so authoritative when it comes to the depiction of international human rights as a subject and in the analysis of controversies about its interpretation, application, and effectiveness.

Donnelly makes the valuable, and somewhat provocative, observation: "The study of human rights must in the final analysis rest most heavily on the study of *comparative* politics, not international politics" (180, author's emphasis). This is a provocative suggestion because, as Donnelly notes, "...the academic study of human rights has been, and still remains, dominated by students of international law and politics" (180). He considers the "national dimensions" of human rights to "have been woefully understudied," a matter of concern as "the moral universality of human rights...must be realized through the particularities of national action" (181). It is true, although less so than a decade ago, that almost all scholarly work in the field has been undertaken by

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<sup>1</sup> For representative instances of adherence to the broader agenda, additional to Ignatieff, see the influential casebook, Henry J. Steiner and Philip Alston, eds., International Human Rights in Context: Law, Politics, Morals (New York: Oxford University Press, 2<sup>nd</sup> ed., 2000); Richard Falk, Human Rights Horizons (New York: Routledge, 2000).

internationalists, and until almost as recently, principally by international lawyers.<sup>2</sup> Would the comparative study of human rights be feasible? Yes, of course, and it would be illuminating. One could imagine a UNESCO project to divide the world into regions, commissioning country studies in each region, with a series of volumes resulting at the end of the process. Possibly, the political constraints are too great within the United Nations system, and such a project is better funded by a consortium of private foundations.



Having praised Donnelly, as fully warranted, let me turn to some concerns with the substance and tone of the approach. First of all, I find the treatment of Western origins is addressed in a manner that is too facile to be dispositive. Donnelly writes that "...the suggestion that internationally recognized human rights are appropriately rejected outside of the Western world because Westerners played the central role in developing the ideas and practices should be met with derision..." (70). And further, "...human rights are too important to be rejected—or accepted—on the basis of their origins" (70). I do not find this to be an adequate way to comprehend the problematics of the non-Western reception of the human rights tradition. There are several issues that are too neatly finessed by Donnelly's categorical formulations: to begin with, the Western origins affect the degree of affect that attaches to the norms generated by such a process. It is not a matter of acceptance or rejection, but the realization that in a system so heavily dependent on patterns of voluntary compliance and normative socialization, the exclusion of participation at the origins may create a distance from the legitimating pulls toward compliance felt in Western societies.<sup>3</sup> Such a sense of distance is magnified with respect to those assertions of normative claims that have a Western origin given the colonial heritage, as well as the post-colonial impulse to fashion an independent path.

Closely related are non-Western suspicions that the Western profession of human rights is linked to finding ways to perpetuate the projection of power by the strong at the expense of the weak, especially in the setting of humanitarian intervention. While non-Western attitudes may be over-generalized, and if applied too dogmatically, could lead to tragic failures by the international community to protect genuinely threatened communities, there are grounds for suspicion that the hegemonic West, especially the United States, exerts pressure and neglect selectively, reflecting geopolitical, rather than moral priorities. Consider the emphasis on Cuban human rights violations and the relative disregard of Israeli human rights violations. The point here is that Donnelly's seizure of the high ground on universality overlooks some very credible reasons for non-Western countries to view an aggressive approach toward the enforcement of human rights with acute suspicion. In fairness, for reasons aside from universality, and relating more to the difficulties of impartial

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<sup>2</sup> It is true that even those studies that focus on national arenas of contestation are undertaken as case studies constitutive of an internationalist approach rather than as a component of comparative political study. For good examples of such a sub-genre see Zehra Arat, *Democracy and Human Rights in Developing Countries* (Boulder, CO: Lynne Rienner, 1991); Alston Brsyk, *The Politics of Human Rights in Argentina: Protest, Change and Democratization* (Stanford, CA: Stanford University Press, 1994). The United States is often studied with respect to human rights, not comparatively, or even nationally, but in terms of impact on foreign policy. See e.g. David Forsyth, *Human Rights and U.S. Foreign Policy: Congress Reconsidered* (Gainesville, FL: University of Florida Press, 1988).

<sup>3</sup> See important discussion of these issues in Thomas M. Franck, *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990).

enforcement, Donnelly takes a very restrictive view of humanitarian intervention, reserving it for cases of genocide, or at least ethnic cleansing (242-260).<sup>4</sup> Ignatieff, in contrast, fuels non-Western skepticism due to his advocacy of interventionary diplomacy coupled with a fondness for America's imperial role in world politics.

But there are additional reasons to challenge Donnelly's approach with respect to universality and Western origins. The case of indigenous peoples is demonstrative. Their representatives were not participants in the drafting of the UDHR, and the resulting framework of norms did not speak to their circumstances, values, and worldview. Instead of individual rights, indigenous peoples were preoccupied with the survival of their collective identity, and with their capacity to maintain traditional folkways in the face of the onslaught of modernity. It was only when indigenous peoples under their own auspices drafted their own document entitled Declaration of the Rights of Indigenous Peoples did the distance between the two conceptions of human rights become clear. What is dramatically true for indigenous peoples, is also to varying degrees true for other types of religious and civilizational differences, especially if differentiated according to broad categories such as West/non-West or North/South.<sup>5</sup> I believe Donnelly understates the importance of civilizational tensions associated with such issues as balancing rights with responsibilities, the degrees to which economic and social rights are addressed within the discourse of human rights, and the extent to which community or group rights are protected in a form separable from individual rights. Although it can be shown, as Donnelly does with acute reasoning and argumentation, that some of these differences can be dissolved by semantic analysis or are less than meets the eye, the concerns persist to the extent that representatives of non-Western views perceive the differences to be entitled to respect and adjustment.<sup>6</sup> In this context a constructivist outlook is more useful than an analytic one, that is, differences are or can be as important as principal participants think they are.<sup>7</sup>

There are other somewhat troublesome exclusions in Donnelly's presentation of human rights. Although Donnelly advances an important argument for considering economic and social rights as integral to human rights, there is little discussion of the relevance of economic globalization to material well being of the majority of people living on the planet. The severity of patterns of deprivation seem to me to have justified, if not required, more sustained attention to the argument that neo-liberal globalization is responsible for the perpetuation of massive poverty and widening income/wealth disparities between and within countries. Not only is there an absence of discussion, but leading attempts to address such issues are not even cited in Donnelly's otherwise admirably

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<sup>4</sup> An influential effort to express a more expansive view of humanitarian intervention, which exhibits too little sensitivity to non-Western anxieties, is the report of the International Commission on Intervention and State Sovereignty, The Right to Protect (Ottawa, Canada: International Development Research Centre, 2001).

<sup>5</sup> For important non-Western approaches see Smitu Kothari and Harsh Sethi, eds., Rethinking Human Rights: Challenges for Theory and Action (Delhi, India: Lokayan, 1989); Chandra Muzaffar, Human Rights and the New World Order (Penang, Malaysia: Just World Trust, 1993), and Rights, Religion, and Reform: Enhancing Human Dignity through Spiritual and Moral Transformation (London, UK: Routledge, 2002).

<sup>6</sup> In this regard, I do not find Donnelly's case against group rights to be satisfactory as formulated in Chapter 12, pp. 204-224. It appears to think that because it has seized the rational high ground it has resolved the debate, overlooking the psycho-politics associated with the importance (or unimportance) of treating group rights as reducible to an aggregate of individual rights.

<sup>7</sup> For the standard account of the constructivist perspective see Alexander Wendt, Social Theory of International Politics (Cambridge, UK: Cambridge University Press, 1999).

comprehensive bibliography.<sup>8</sup> It is not enough to acknowledge rhetorically economic and social rights—especially when Donnelly dismisses the right to development as superfluous. More attention must be paid to the mechanisms of economic and political power, and how they distribute the productive output of the world in a manner that produces immense human suffering.

And, finally, for a book bearing the imprint of 2003, it is almost unimaginable that the impact of September 11 on the future of human rights is not discussed, and not even mentioned. Such is the rational cast of Donnelly's mind that historical developments are evidently regarded as virtually irrelevant to the treatment of international human rights. True, in explaining the revisions contained in his second edition Donnelly does say that the cold war set the scene in his original edition, and passing from the scene gives other concerns greater salience. But why not September 11? Surely, the security imperatives at home and abroad, especially as construed by the Bush administration, have created a circumstance that many of us here regard as having generated an unprecedented crisis in human rights. It would have been inconceivable on September 10 to detain criminal suspects without disclosing their identities or denying the rights to consult counsel or to transfer individuals suspected of an involvement with terrorist activities to other countries where police practices are known to rely on torture to extract information. Surely, it should be *academically* notable that a respected magazine such as *The Economist* devotes a cover story to whether in the post-September 11 world torture should be considerable an acceptable anti-terrorist instrument.

Of course, it is always easy for a reviewer to ask for more, a kind of readers' greed, and there is a sense that Donnelly's treatment of human rights is so influential because it takes such an essentialist view of the subject. In conclusion, then, praise for this new edition of Donnelly's Universal Human Rights in Theory and Practice is fully merited: the book remains at the top of any bibliography of indispensable books dealing with human rights. Nevertheless, I am still hoping for a third edition that will incorporate some of the exclusions noted above, but I know better than to hold my breath. Jack Donnelly has a keen sense of how to address human rights as an academic subject, and has done so well with it that he may be quite justified in turning a deaf ear to criticism, reproducing his own version of a third edition some years hence—one that does to the second edition what he has now done to the first: that is, conceptually nothing!

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<sup>8</sup> For two notable efforts see Alison Brysk, Globalization and Human Rights (Berkeley, CA: University of California Press, 2002); William Felice, The Global New Deal: Economic and Social Human Rights in World Politics (Lanham, MD: Rowman & Littlefield, 2003), and Taking Suffering Seriously: The Importance of Collective Human Rights (Albany, NY: State University of New York Press, 1996). Donnelly's skeptical views of group rights claims never come to grips with Felice's well-argued contrary views.