

Book Review

THEORY AND REALITY IN THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS

J. Shand Watson. Ardsley, NY: Transnational Publishers, 1999.
US\$115 (Hardcover)

Professor Watson's book provides a controversial perspective on Austin's timeless question "is international law really law" by asking essentially "Is international human rights law really law?" Watson's most recent writing is admittedly a response to the many commentators who insist that human rights are valid at international law. For Watson, good intentions and desirable conclusions are not to be equated with legal validity and Watson undertakes to demonstrate what he perceives to be the rift between international human rights theory and reality.

Given its unique foundation on custom, the validity of the principles of international law—and international human rights law in particular—have always been susceptible to the undermining influence of "inconvenient facts." Professor Watson's book, however, goes beyond drawing attention merely to inconvenient facts to mount, in a work replete with well-documented and compelling examples, a fundamental challenge to the notion that human rights are, or even can be, governed by an international legal regime.

As international law is a customary system, that human rights are part of an international legal regime must, for Watson, be demonstrable through strict adherence to a traditional primary source of international law: state practice. Professor Watson asserts that international law, as a decentralized system of custom, cannot accommodate ends inconsistent with the practices of States, and, accordingly, human rights norms are conceptualized erroneously within an international legal framework due to the extent of contemporary and past violations. In this way, Watson finds it curious that a customary legal system can exhibit simultaneously an increasing number of prohibi-

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tive norms despite the existence of thoroughly inconsistent practice by States.

Professor Watson further suggests that human rights are incompatible within international law because the international legal system is void of sovereign authority and institutions necessary to enforce its rules. Watson contends that the lack of prohibitive human rights norms in the international legal order is due not solely to violations of primary rules but rather caused by the fact that international law contains neither a rule of recognition nor a set of secondary rules to implement primary rules. To Watson, given that the reasoning used to produce human rights norms is invariably legislative and no secondary rules bring social reality into the prescribed realm, human rights norms are extrinsic to international law—again, an inherently customary system.

A well-documented and reasoned positivist work, Watson's text boldly tackles some of the complex issues to which many human rights legal advocates have either turned a blind eye or attempted to explain away with international law analysis that has never totally comfortably carried the day. Watson courageously and, in candid and forthright terms that directly challenge international jurisprudence and the writings of the foremost leading experts in custom and international law, forcefully argues the question that gnaws at many human rights lawyers and advocates: perhaps the international human rights law emperor is not wearing so many clothes.

Professor Watson's book is an ambitious critical assessment of the conceptualization of human rights as the stuff of international law and an excellent resource on the collective documentation of massive human rights violations over the course of this and the past century. While an intriguing read and powerful statement, Professor Watson's book presents a highly debatable thesis—rather than a definitive answer—regarding the status of human rights at international law.

With its extensive use of examples of violations, many of which are extremely well-known, Professor Watson's book is susceptible to being categorized with the superficial observers preoccupied with the numerous stories of violations in today's newspapers while ignoring the "law habit" in international law and human rights. Indeed, in dwelling extensively on the breach and not the honor of human rights through international law, Watson gives unfortunately short shrift to the practice of States that obey human rights norms, prevalence of human rights concepts within most States, and increasing national implementation of human rights norms outside the scope of the inter-

national legal system. Is Professor Watson overly deferential to one source of international law—state practice—and therefore not considering with due reverence the legitimacy of human rights treaties as international legal instruments? Further, does Watson adhere to an excessively strict notion of state practice in his resistance to the “new” international law at the expense of a broader range of state practice which may go more toward the legitimacy of human rights at international law, especially given the advent of supranational human rights courts and institutions in the latter half of the past century? Does Watson place too much emphasis on interventionist enforcement and the sovereignty of States under the U.N. Charter in his assessment of the validity of human rights within the international legal system? In essence, is Watson asking too much of international law or defining it in excessively narrow terms and thereby denying the proponents of human rights the significant political power of legalistic analysis in the struggle for the recognition and protection of human rights in a world where legal determinism carries untold persuasive value? Regardless of these fundamental questions, Professor Watson’s book makes a very convincing case that should leave legally-trained human rights advocates with a healthy sense of insecurity.

THEORY AND REALITY IN THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS provides an important challenge to the contemporary wisdom of human rights as international law at a time when the claim seems to be taken more and more for granted. Human rights advocates and lawyers will benefit from Professor Watson’s book as a source of arguments counter to their positions, and hopefully it will motivate many to explore further the current state of human rights as well as avenues other than international law for their effective protection worldwide.

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