INTRODUCTION TO HUMAN RIGHTS

DANIELA IKAWA
1. What are human rights? Why would we have human rights?

2. Would there be universal rights? If so, what type of universalism should we be aiming at?

3. How do we balance the need to find a justification for universal rights and the need to protect differently situated individuals?

4. The human rights framework was originally thought in terms of State violations against individual rights. What challenges could that idea pose to the protection of rights in today's world?
• New idea of sovereignty.

• International legal personality to all individuals (Benhabib 12).

  • Individuals are rights-bearing due to their humanity, not only due to their citizenship:

    • Article 1. All human beings are born free and equal in dignity and rights. [...]

    • Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]

• “Right to appeal to other peoples” in defending rights:

  • Possibility of presenting claims internationally – CEDAW, CERD, CAT, CESC, HRC, CRPD, etc

  • Obligations to protect the rights of others abroad: universal jurisdiction – Pinochet

• Why do we have human rights?
WHY DO WE HAVE HUMAN RIGHTS?
WHY DO WE HAVE HUMAN RIGHTS?

- **Substantive foundations**
  - Reason and liberty (Kant, Rawls)
  - Pain and pleasure (Mill and Bentham and Locke)
  - Social contract to protect natural rights (Hobbes, Locke)
  - God (Locke)
  - Culture (Rorty)
  - Sentiments (Rorty)

- **Procedural foundations**
  - Positivism and democratic process
WHAT TYPE OF UNIVERSALISM ARE WE ADOPTING WHEN WE TALK ABOUT HUMAN RIGHTS?
CONCEPTS IN DEGREES
(ALTERNATIVE PERSPECTIVE: DEGREES IN UNIVERSALISM, ACCORDING TO CULTURE, INTRINSIC VALUE AND DIALOGUE)

Defining universalism and Relativism

Radical Universalism
(Intrinsic value/human nature is the only foundation for rights)

Strong Universalism
(Intrinsic value is the main foundation for rights or there is much faith in dialogue)

Weak Universalism
(culture is the main or the only foundation for rights; with a weaker faith in dialogue)

Radical Relativism
(culture is the only foundation for rights)
Defining Universalism and Relativism

Radical Universalism
- Individualism
- Independence from Society
- Potential for imperialism
- No dialogue

Strong Universalism
- Foundation both on culture and on intrinsic value
- Some dialogue but emphasis on entrenched rights

Weak Universalism
- Foundation both on culture and on intrinsic value or only on culture
- Much faith on dialogue to produce strong agreement on substantive rights

Radical Relativism
- Cultures are sacred, homogeneous and static
- Individuals are nothing more than a part of the whole
- No dialogue
CHALLENGES

• Differently situated individuals
  • Women
  • Intersectionality

• How do we balance the need to find a justification for universal rights and the need to protect differently situated individuals?

• The human rights framework was originally thought in terms of State violations against individual rights. What challenges could that idea pose to the protection of rights in today’s world?
CONCRETE SUBJECT AND DIFFERENTLY SITUATED PEOPLE

  - Gender violence
  - Lack of access to resources
  - Perception of other violators of human rights besides the State: domestic violence

- Platform of Action in Beijing (1995) – Priorities with regard to violations and need to attain more control over their lives (Okin 87-88)
  - Overwork
  - Underpay
  - Malnutrition
  - Inadequate education
  - **Unequal health care**
  - Violence
  - Effects of violent conflicts on women
  - Unequal access to power
  - **Unequal access to resources**
  - Stereotyping of women
  - Lack of women’s perspectives in the media
  - Persistent discrimination
ECHR, Tysiąc v. Poland (2007)  
EQUALITY AND DIVERSITY

- Sexual orientation
- Moral agent
- Pain and pleasure
- Gender
- Race
- History
- Talents and achievements
- Power

History → Goals
The human rights framework was originally thought in terms of State violations against individual rights. What challenges could that idea pose to the protection of rights in today's world?
STATE CENTERED CONCEPT
DOMESTIC VIOLENCE
MARIA DA PENHA VS. BRAZIL (2001)

- 1983: two attempts
- Criminal justice in Brazil: 15 years
- Reflection of massive violations
  - 70% of homicides
  - Impunity (RJ: 2000/0 in 1990)
- Inter-American Commission of Human Rights
  - Compensation
  - Trainings
  - Prevention
  - Conviction
Violence against women

The Committee on the Elimination of Discrimination against Women,

Considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life,

Taking into account Economic and Social Council resolution 1988/27,

- Recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);
2. Other measures adopted to eradicate this violence;
3. The existence of support services for women who are the victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.
104 RATIFICATIONS (OCT. 2012)

- **10 cases decided from 2003** (entry in force of the OP) and **2006**: Germany (1), Hungary (2), Austria (2), Spain (1), Turkey (1), UK (2) and the Netherlands (1).

- **Issues:**
  - **Marriage and divorce**: 2
  - **Domestic violence**: 4
  - Right to education (re. marriage): 1
  - Employment:
    - **Maternity leave**: 1
    - Headscarf (inadmissible): 1
  - **Reproductive rights (coercive sterilization)**+: 1
  - Asylum/UK (right to exit) and domestic violence (inadmissible): 1
  - Right to nationality (inadmissible): 1
Article 1 For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2 Violence against women shall be understood to include physical, sexual and psychological violence:

a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place [...]

Article 3 Every woman has the right to be free from violence in both the public and private spheres.

Article 6 The right of every woman to be free from violence includes, among others:

a. The right of women to be free from all forms of discrimination; and
b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.
STATE CENTERED CONCEPT
CORPORATE ACCOUNTABILITY

- New political and economic power
  - In the 1990s, 51 of the world’s 100 biggest economies were corporations (Longworth cited in McCoquodale and Fairbrother 738)
  - McDonalds serves 20 million consumers a day around the world. Transnational corporations cannot even understand the word foreign (Barber 22, 28-29)
  - Only 6 nations (US, Germany, Japan, UK, Italy and France) have tax revenues larger than the nine largest multinational corporations. The profit of Wal-Mart is larger than the Canadian government tax revenues (Monshipouri 971)
  - No international good. War of all against all. Hobbes. (Barber 32) New actor and new basis for political power: not common good but profit

- New reconceptualization of state sovereignty (McCoquodale and Fairbrother 737)
  - ‘It differs from past transnational influences on state sovereignty in the scale and speed of its operation” (McCoquodale and Fairbrother 738)
  - “Under the pressure of globalized institutions, governments in developing states often lack any effective sovereign power to make decisions to protect minorities or to preserve important cultural and social elements within communities.” (McCoquodale and Fairbrother 756)
  - “The Big Brother is no longer watching you; but neither is he watching those who are watching you” (Barber 273)
“Esther Kiobel, for herself and on behalf of her late husband, Dr. Barinem Kiobel and 10 other Nigerians, claims that Royal Dutch Shell Petroleum Co.—along with one of its subsidiaries, and a British firm, Shell Transport and Trading Co.—aided and abetted the Nigerian military dictatorship’s use of murder and torture against opponents of oil exploration in the Ogoni region of the Niger Delta between 1992 and 1995.”

“Kiobel v. Royal Dutch Petroleum […] examine[d] whether corporations enjoy impunity when they are complicit in torture, extrajudicial executions and genocide, or whether they can be sued in the same manner as any other private individual under U.S. law for such egregious violations.”

“The case is brought under the Alien Tort Statute (ATS), a U.S. law that has in recent times developed into a means for foreign victims of international law violations committed by non-Americans to sue in U.S. courts.”

Supreme Court Holding (May 20 2013): The presumption against the extraterritorial application of U.S. law applies to claims under the Alien Tort Statute, and nothing in the text, history, or purposes of the statute rebuts that presumption. For an ATS claim to survive a motion to dismiss, it must “touch and concern” activities occurring in the “territory of the United States.” (Maybe orders emanating/directed from the US but affecting other territories). New claims under State law/State courts and in foreign courts.
FOREIGN COURTS AND UNIVERSAL JURISDICTION
TRAFIGURA (DUTCH OIL COMPANY)

• Toxic waste in Ivory Coast in 2006
• 16 people died and 100k sought medical attention (with nausea, diarrhea, vomiting, breathlessness, headaches, skin damage, swollen stomachs).

- In 2006: settlement of 198 million dollars in Ivory Coast
- In 2006: settlement of 1500 USD for each of the 30000 claimants (from Cote d'Ivoire) after proceedings in a UK court (knew there were no treatment facilities in the Ivory coast).

- In 2008: three French victims started a complaint against Trafigura in Paris alleging corruption, involuntary homicide and physical harm.
- In 2010: Dutch court ruling of 1 million euros fine against Trafigura for exporting waste while concealing its dangerous nature
- In 2012: Dutch court decided to criminally prosecute company’s director for illegally exporting waste

Business and HRs report.

• 16. While welcoming measures taken by the State party to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards, the Committee is concerned that such remedies may not be sufficient in all cases (art. 2, para. 2).

• The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.

CERD. Concluding observations: US. 8 May 2008. Par. 30

• 30. In light of article 2, paragraph 1(d) and 5 (e) of the Convention and of its General Recommendation N. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the States accountable.
NATIONAL JURISDICTION
AGUINDA V. CHEVRONTEXACO (ECUADOR)