

Human Rights and the New Global Order: An Interdisciplinary Conference

8-10 May 2008

John F. Kennedy School of Government
Harvard University

Conference Organizer:

[Mathias Risse](#) (John F. Kennedy School of Government)

Conference Report by:

[Martin O'Neill](#) (Politics, University of Manchester)

Day One: Thursday 8 May 2008

Introduction – Mathias Risse

In his introductory remarks, conference organizer Mathias Risse pointed out that, although the language of human rights has come to occupy a dominant position in recent international political discourse, our understanding of the nature and content of these rights has often lagged some way behind these political developments. Moreover, as Risse emphasized, we need to be aware that, in choosing to make normative claims in the language of human rights, we are thereby also rejecting other, rival, ways of making normative claims. In order to set the agenda for the conference, Risse laid out a range of important and pressing questions regarding the theory and practice of human rights: What are the normative foundations for talk of ‘human rights’? Which human rights do we possess? What difference does the existence of these rights make to the reality of political action ‘on the ground’? Who has the responsibility for securing and protecting these rights? Answering this interconnected set of questions is a job that can only be carried out if we are prepared to engage with a range of disciplines, from philosophy and political theory to public policy, law and anthropology. In bringing together academics from a broad variety of disciplines, the aim of this conference is to facilitate the cross-disciplinary fertilization of ideas and stimulate new thinking, thereby creating the conditions under which good answers to this range of questions about human rights can be given.

1. Human Rights: The Philosophical Work Still Undone

Speaker: James Griffin (Philosophy, University of Oxford and Rutgers University)

Commentator: Rainer Forst (Philosophy and Political Science, Johann Wolfgang Goethe-Universität, Frankfurt)

James Griffin advanced the view that the discourse of human rights is badly in need of solid philosophical foundations. Given that human rights cannot simply be brought into existence by *fiat*, we need a principled way to determine which human rights people really have. Some of the canonical documents of the human rights regime, such as the 1948 UN Universal Declaration of Human Rights, seem to generate rather too many rights without due concern for foundations, as with the Declaration's questionable claim that there is a human right to paid vacations. Rejecting the sort of *functional* account of human rights associated with Ronald Dworkin and John Rawls, Griffin argued for a substantive account of human rights, specified as those particular rights which must be protected in order to secure the conditions for 'normative agency' or 'personhood'. By using this criterion of demarcation in terms of protections for normative agency, we may thereby be able to give a much needed level of determinacy to the 'historical notion' of human rights that has been bequeathed to us. Where indeterminacy remained even after application of the ground of personhood, appeal to political practicalities would then be appropriate in coming to a fully determinate notion of human rights. Griffin's proposal concerns our understanding of *moral* human rights rather than *legal* human rights, and he allows that the two categories only partially intersect; nevertheless, our thinking about *legal* human rights should proceed against the backdrop of a sophisticated and determinate understanding of the nature of *moral* human rights, and of their foundation in terms of the protection of normative agency.

In his response to Griffin, Rainer Forst sided with Griffin in rejecting functionalist accounts of human rights, such as the view developed by Rawls. Forst also agreed that some conception of *human dignity* (developed in Griffin's account in terms of personhood and normative agency) should be at the centre of our conception of human rights. Nevertheless, Forst rejected Griffin's specific 'agency' account of human rights, instead proposing that the elaboration of the idea of human dignity at the centre of our understanding of human rights should be in terms of a 'basic right of justification' enjoyed by all, whereby each person is owed a justification for any political structure under which they live. Forst suggested that this 'moral political' conception of the foundations of human rights is better able to account for the history of human rights as bulwarks against tyranny, and their ongoing potential as tools of emancipation.

2. Toward a Revival of Consequentialist Human Rights Theory

Speaker: William Talbott (Philosophy, University of Washington)

Commentator: Daniel Markovits (Yale Law School)

William Talbott's proposal regarding how we should best understand the normative underpinnings of human rights demonstrated a very different approach to that favoured by Forst or Griffin. Taking his inspiration in part from J. S. Mill's famous utilitarian defence of rights, Talbott developed an indirect consequentialist account of a set of rights that should be both *robust* (in the sense that the government is not permitted to infringe them for the sake of the greater good) and *inalienable* (in the sense that they may not be relinquished by the rights-holder). Talbott argued that a list of rights, including many of the standard human rights, such as rights of bodily integrity and physical subsistence, but including also certain democratic political rights, could be justified by appeal to purely consequentialist considerations. Such rights would be necessary to promote well-being in the long term, as only when such rights were in place could governments overcome problems of 'reliable feedback' (i.e. ensuring that the government receives adequate information about the effects of its policies) and 'appropriate responsiveness' (i.e. ensuring that the government can be relied upon to respond properly to information about its performance). Pointing to the historical record, Talbott argued that the failures of Communist regimes during the twentieth century demonstrate the strength of the indirect consequentialist case for robust rights. Moreover, these liberal rights should be universal, as they are the solution to a culturally universal problem: the problem of the oppression of less powerful groups by the more powerful.

Daniel Markovits responded to Talbott's arguments by highlighting some of the problems faced by Talbott's view, both at the foundational level and also at the level of implementation. At the foundational level, Markovits raised the issue of how the idea of human rights should fit in the broader family of our set of normative ideas. On many views, human rights have a special role as providing a way of framing the strongest criticisms that one society can make of another, thereby opening up a discursive space for those who disagree deeply about other issues. This aspect of the 'specialness' of human rights may be difficult to integrate within Talbott's consequentialist framework. At the level of implementation, Markovits also raised a number of questions concerning the move from Talbott's consequentialist foundations to the specification of the precise set of rights that should be protected, questioning especially whether democratic rights would really gain robust protection on a consequentialist view, given that we can think of many circumstances where the exercise of democratic rights can issue in unwelcome consequences.

3. Human Rights as a Political Practice

Speaker: Charles Beitz (Politics, Princeton University)

Commentator: Michael Doyle (School of International and Public Affairs and Law School, Columbia University)

Charles Beitz's presentation sought to answer the foundation question of "how we should think about human rights" or, to put things another way, of what kind of things human rights really are, by taking a different kind of approach, distinctive from both Griffin's and Talbot's. Beitz's more pragmatic 'political' examination of the nature of human rights started with the ambition to take human rights seriously as actually existing features of international public life. On this approach, human rights are *sui generis* normative features of international political practice – particular kinds of principles that are reason-giving for a broad variety of agents within international politics. In developing this conception of human rights as a political practice, Beitz advanced a 'simple model' of the nature of those rights, whereby such rights are conceived as normative requirements whose aim is to protect urgent individual interests from certain predictable dangers. These rights are best conceived as involving a 'two-level model' with regard to their significance, whereby first-level responsibility for the protection of human rights lies with particular states, whereas (at the second level) human rights are nevertheless matters of international *concern* for a wide variety of actors, such as other states, NGOs, and so on. Beitz's account of the nature of human rights viewed these rights as being heterogeneous as to type, but nevertheless sharing a broad normative reach and political significance. One of Beitz's aims, in developing this account, is to shift attention from 'demand side' problems in the theory of human rights (e.g. in an account of why it would be a rights violation to be treated in a particular way) to 'supply side' problems, regarding the allocation of responsibility for protecting human rights, and the nature of the reasons that human rights provide for a variety of state and non-state actors.

Michael Doyle, in his response to Beitz, began by stressing the many issues on which they agreed. Doyle acknowledged the advantages of taking a practical, political approach to the theory of human rights, and also endorsed Beitz's 'two-level model'. However, Doyle was also concerned to draw attention to the practical costs of the practical conception of human rights. He emphasized that treating human rights as being in some sense *aspirational* can dilute their power, and also highlighted some of the problems of identifying the competing responsibilities of the diverse duty-bearers on the 'supply side' of human rights. Perhaps most significantly, while a coherent set of human rights needs to be internally consistent, the real-world practical politics of human rights can often be very far from consistent.

4. Human Rights as Membership Rights in the Global Order

Speaker: Mathias Risse (John F. Kennedy School of Government, Harvard)

Commentator: Simon Caney (Politics, University of Oxford)

Conference organizer Mathias Risse presented an ambitious and original account of the nature of human rights, involving three central ideas: firstly, the idea (common in the 17th Century, in political theorists like Hugo Grotius) that the earth should be viewed as being collectively owned by all of humanity; secondly, the idea of human rights themselves as being rights regarding the organization of one's society, that are independent of customs, institutions or religions; and thirdly, the idea of membership rights in the global political and economic order. On the view developed by Risse, human rights are membership rights in the global political and economic order, and one basis on which we determine what membership rights people have is the standpoint of collective ownership of the earth. Risse argued that, as a result of socioeconomic globalization, there are now enough global structures to render talk about global membership rights appropriate, beyond the scope of any particular society. These rights are moral claims that take on the shape of rights, and allow individuals to formulate demands against the global order itself. Human rights, on this conception, are not themselves natural rights, but are particular kinds of associative rights; their derivation is contingent since it draws on the features of a contingent but relatively abiding global order. In the background of this conception is the powerful idea that the existence of a global socioeconomic order must be reconciled with ownership rights, and in particular with the common ownership of the globe enjoyed by all. Risse's approach plausibly generates a set of human rights, including the core human rights of bodily integrity, and certain rights to liberty, fair treatment, and the satisfaction of one's basic needs. But, given the structure and derivation of human rights, this view will not go so far as to treat liberal democratic rights as themselves being kinds of human right.

In responding to Risse's proposal, Simon Caney presented a comprehensive menu of particular points where one might want to put pressure on the different aspects of Risse's account. It is a consequence of Risse's view (as well as a number of other views) that human rights can only be violated by those acting in positions of authority; but this struck Caney as an artificially narrow restriction on when we should speak of instances of rights violations. Caney was also troubled by the potential loss of normative force that might be associated with treating human rights as a species of associative rights. On Caney's view, what matters is our humanity, as such, not the form of our associations or the nature of our claims of ownership.

Day Two: Friday 9 May 2008

1. International Law and Human Rights

Speaker: Beth Simmons (Government and Weatherhead Center for International Affairs, Harvard University)

Commentator: Jonathan Wolff (Philosophy, University College London)

The second day of the conference saw a change of focus and emphasis, with a move from foundational philosophical questions, to more concrete issues regarding the legal and political manifestations of human rights. Beth Simmons began her discussion of the international law of human rights in an upbeat fashion, determined to convince her audience that, although international law has often taken a ‘bad rap’ with regard to the force and effectiveness of international human rights treaties, in reality things are not so bleak. As against the views of the cynics and pessimists, careful analysis shows that the international law of human rights does, indeed, have systematically good consequences (albeit not in all places and at all times). States can hope to gain a strategic advantage from the cynical ratification of treaties with which they do not intend to comply only in certain specific circumstances, and their advantage will only be short-lived. Thus, for good strategic reasons, ‘insincere ratification’ is not such a common phenomenon. Moreover, signing-up to human rights treaties often has positive domestic consequences, through changing the domestic political agenda, or by enhancing possibilities for new kind of domestic litigation (as with torture litigation brought forward by human rights groups in Israel). Perhaps most importantly, successful international human rights treaties can motivate groups within particular countries to mobilize in order to demand the protection of their rights. Thus, given that human rights treaties have more real-world force than is commonly supposed, there are good reasons for states like the US to be more concerned to ratify and support such treaties.

Jonathan Wolff’s response to Simmons’s presentation dealt not so much with her particular claims about the strength and efficacy of human rights treaties, but instead raised a number of more general issues regarding the relationship between political philosophy and institutional or public policy questions. Often political theorists settle particular questions (e.g. regarding the effectiveness of human rights treaties) in a merely anecdotal fashion; Simmons’s work shows that, instead, political philosophers need to keep their eyes and ears open for the best quantitative research. As Bernard Williams once sagaciously pointed out, political philosophy should not be about the best world that there could be, but about the best world that we can get to from here. Consequently, we need to know where *here* actually is, and work like Simmons’s can tell us something important about our current location.

2. **Can the Human Rights Movement Achieve its Goals?**

Speakers: Emilie M. Hafner-Burton (Woodrow Wilson School of Public and International Affairs, Princeton University) and James Ron (Norman Paterson School of International Affairs, Carleton University)

Commentator: Stephen Walt (John F. Kennedy School of Government, Harvard University)

James Ron and Emilie Hafner-Burton's presentation concerned what one might call "the great methodological divide" between qualitative and quantitative approaches to the study of human rights. To put things starkly, qualitative treatments of human rights tend to be optimistic about the effects of the international human rights regime in achieving its ends, whereas quantitative studies (albeit, as we have seen, with the exception of Beth Simmons's work) tend to be much more pessimistic. In analyzing this methodological divide, Ron and Hafner-Burton were concerned with two parallel human rights 'campaigns': the campaign of 'elite conversion' and the broader campaign of mass behavioural change. The 'elite conversion' campaign has been highly successful, as can be shown by the success of the discourse of human rights. But tougher questions are raised when we instead focus on whether the international human rights regime has been so successful in the case of mass behavioural change. Hafner-Burton and Ron presented a number of explanations of the divergence between quantitative and qualitative approaches to these questions, many to be explained by the methodological difficulties of using quantitative measures of human rights violations. Their conclusion was that more and better research is required, with more 'micro' and 'mixed method' research, and with more interdisciplinary and collaborative research. They ended their presentation by urging us not to ignore the possibility of the pursuit of human rights causing "iatrogenic effects" – i.e. harmful effects generated by the pursuit of human rights – as when the discourse of human rights crowds out more potentially effective strategies for human betterment.

In his response to Hafner-Burton and Ron, Stephen Walt raised a number of potential problems for their treatment of the "methodological divide". Walt pointed out that, as evidenced by the work of Samantha Power on the Rwandan genocide, it would be inaccurate to say that qualitative theorists of the human rights regimes always ignore failures. Walt also suggested that there was a certain tension in Hafner-Burton and Ron's claims that, on the one hand, the quantitative data is rather weak and inconclusive, but that, on the other hand, it shows that progress is not being made, and urged them not to underestimate the significance of small quantitative improvements. One should also keep an eye on counterfactuals – just because human rights improvements seem to have "flatlined," that does not show that the human rights regime isn't efficacious: human rights promotion may, after all, have been the "finger in the dyke" stopping things from getting even worse still.

**3. Justice on the Ground?
International Criminal Courts and Domestic Empowerment'**

Speaker: Jane Stromseth (Law Center, Georgetown University)

Commentator: Lukas Meyer (Philosophy, Universität Bern)

Jane Stromseth's presentation looked at the new legal institutions of international and 'hybrid' criminal courts and tribunals, of the kinds that have been put into operation with regard to the war crimes of the Yugoslav civil war, and in the wake of the civil wars in Sierra Leone and East Timor. These international and hybrid criminal courts are the first institutions of their kind since the Nuremberg and Tokyo courts that were set up to try Nazi and Japanese war criminals after the Second World War. Stromseth's central question was whether the setting up of these institutions has done anything to advance the cause of human rights "on the ground" in the various states in which they have been instituted. In territories like Sierra Leone and East Timor, hybrid criminal courts can advance the cause of human rights both through demonstration effects (as when they show that the apparent immunity of the politically powerful has been comprehensively punctured, or when they reassure the local population that criminal procedures can and will be fair), and through capacity building and exemplar effects (as when such tribunals have the effect of empowering local civil society groups, or build local expertise that can then later be used in the domestic courts of that state). In both of these regards, Stromseth was especially laudatory regarding the "outreach" efforts of the special court in Sierra Leone, which compared favourably with the efforts of the special court in East Timor. Stromseth's overall conclusion was that the impact of international and hybrid courts has been a mixed story, and that such institutions should seek to maximize their positive effects by undertaking the sort of outreach activities that have been undertaken by the Sierra Leone special court.

Lukas Meyer's response related Stromseth's empirical investigation of "justice on the ground" to H.L.A. Hart's philosophical work regarding the relationship between social recognition and acceptance and the legitimacy of legal institutions, whereby legal authority is seen as based in shared convictions about what the law is and what it requires. Meyer also raised some important questions for Stromseth's approach, regarding the relationship between the legal authority of international courts and the legitimacy of the initial interventions that had brought those courts into existence, and regarding the relationship between post-conflict criminal courts and the broader goals of promoting social justice in general (and not just human rights) in post-conflict societies.

4. The Role of Consequences, Comparison and Counterfactuals in Thinking Ethically and Politically about Human Rights Trials

Speaker: Kathryn Sikkink (Political Science and Law School, University of Minnesota)

Commentator: Richard Miller (Philosophy, Cornell University)

Kathryn Sikkink's presentation explicitly faced one of the central issues that divide philosophical and social scientific approaches to human rights: that is, the unwillingness of social scientists and scholars of international relations to make explicitly normative claims and arguments. Sikkink proposed to do something to overcome this silence about the normative, by making some normative claims from the standpoint of international relations theory. Sikkink suggested that an empirically well-informed account of the ethics of human rights promotion should start by granting a certain normative authority to contemporary human rights law, and then proceed by use of a perspective that combined insights from consequentialist and deontological approaches to ethics. With regard to the ethical consequences of human rights trials, one might seek to compare them either to the ideal, or to actually existing empirical states of affairs that has obtained in the past, or in comparable countries at the present time. On Sikkink's view, 'hypothetical' comparison to the ideal suffers from being excessively idealized, and the best strategy is to undertake a process of what she calls "empirical comparison". Sikkink argued that normative judgment is a result of a combination of the premises and commitments we begin with and the empirical research results about the consequences of action, and suggested that the best ethical judgment requires the best empirical research we can do using all the research tools at our disposal. Only in this way can we ensure that we render judgments while keeping in mind the limits and possibilities of the real world of politics.

In responding to Sikkink's presentation, Richard Miller raised a number of important foundational questions for her approach to the ethics of human rights promotion. Miller's central concern was that Sikkink's approach takes too little account of the resources of those who argue for strategies of human betterment different from her own, and specifically strategies relying less on universal legal prescriptions or that are more deeply opposed to underlying tendencies of U.S. foreign policies. Miller was also concerned that Sikkink's proposal that international human rights law should be the basic source of the values underlying human rights research may suggest a morally inhibiting conventionalism, by granting too much normative authority to existing human rights law. Miller also raised the problem that Sikkink's approach to human rights trials relies on an insufficiently supported universalism. Miller urged Sikkink to consider strategies that are more pessimistic about the enduring material interests steering U.S. foreign policies, not least through going beyond "empirical comparison" with the past, to considering what more might be hoped for the future.

Day Three: Saturday 10 May 2008**1. Why Nations, Not International Society,
are the Proper Guardians of Human Rights**

Speaker: Jeremy Rabkin (School of Law, George Mason University)

Commentator: Philippe van Parijs (Philosophy, Harvard University and Chair Hoover d'éthique économique et sociale, Université Catholique de Louvain)

If the yesterday's presentations had shared a broad consensus on the coherence and desirability of the international regime of human rights protection, Jeremy Rabkin's concern was to present a dissenting viewpoint, the aim of which was to puncture that consensus. On Rabkin's view, we should neither hope nor expect that international society could or should protect human rights; instead, this is a job for national governments. Indeed, on Rabkin's view, the idea that international institutions should protect rights is a recent and strange development and, indeed, the whole discourse of human rights is driven by an unreasonable pursuit of consensus, and a willful ignorance of the realities of international power politics. We should recall, after all, that the 1948 Universal Declaration of Human Rights – a document treated by many as a source of great normative authority – was itself born out of pragmatic negotiations with the Soviet regime, which itself violated many important basic rights (and hence, of course, explaining why the 1948 Declaration contains no human right to private property). Moreover, there are real normative costs to pretending that we have a consensus of this kind where no consensus exists (as when compromises are made to achieve agreement on human rights treaties). Above all, Rabkin suggested that we should greatly lower our expectations of what the international human rights infrastructure could or should achieve. We should also beware the distorting influences of the discourse of human rights, especially when it blinds us to the realities of conflicts and trade-offs in international politics, or when it leads us to be comparatively over-critical of the actions of democratic states, instead of training our sights instead on the world's worst rights abusers.

Despite disagreeing with many of Rabkin's specific claims about the human rights records of, for example, Israel and Cuba, Philippe van Parijs found himself in broad agreement with many of Rabkin's points. Van Parijs agrees that the discourse of human rights should not enjoy any kind of normative primacy, because, in terms of our background normative theory, it is *justice* that is the first virtue of social institutions. Moreover, on van Parijs's view, we should endorse a cosmopolitan understanding of the demands of social justice. Thus, van Parijs holds that, whilst we may endorse

the human rights infrastructure where and because it advances goals of justice, there is nothing philosophically special about human rights, which should best be viewed as mechanisms for promoting outcomes that can be characterized in terms that make no reference to human rights.

2. Human Welfare, Not Human Rights

Speaker: Eric Posner (Law School, University of Chicago)

Commentator: John Tasioulas (Philosophy, University of Oxford)

Eric Posner continued Jeremy Rabkin's and Philippe van Parijs's approach of questioning the normative primacy of the idea of 'human rights', albeit from a perspective that is quite different to those advanced by either Conservative/Realist or Egalitarian/Cosmopolitan skeptics about human rights. Posner's point of departure from the human rights 'consensus' was, instead, grounded in welfarist commitments. Levelling criticisms against the human rights regime for lack of enforcement mechanisms, convergent interests, and philosophical justification, Posner proposed an alternative welfarist approach, under which human rights treaties could be replaced by 'Welfarist treaties', which, by contrast, would promote clearer and more consensual goals, and be more amenable to clear monitoring and enforcement. Having canvassed a variety of welfare indicators (per capita GDP, life satisfaction, objective indicators such as HDI), each associated with different approaches to the characterization of well-being (desire-based, mental state, objective list), Posner proposed that we make use of aggregative indexes of human well-being, while also pointing out that states that do badly on one measure tend also to do badly on other measures as well. Posner further suggested that, given the relationship between development and human rights, there may be good pragmatic reasons for favouring a welfarist treaty regime on the basis of an underlying commitment to human rights. Much has been done to accommodate the provision of development aid to human rights; on Posner's view, we should also consider moving towards the opposite accommodation.

John Tasioulas, in his response to Posner, raised a number of important problems, both at the level of value and at the level of practical policy, for the suggestion that a concern for welfare should replace a concern with human rights. In doing so, Tasioulas emphasized that there are at least three levels at which these questions present themselves: the moral, political and legal; and we would do well to keep these levels carefully apart from one another in our thinking. Tasioulas emphasized that we can reject Posner's presentation of the situation as involving a choice *between* a concern with welfare and a concern with human rights; instead, we can retain both (as Bernard Williams put it,

“perhaps we need as many concepts as we find we need, and no fewer”). At the level of policy, Tasioulas questioned whether there might not be a double-standard in Posner’s comparison of human rights treaties as they are with welfarist treaties as they might be. Indeed, many of the acknowledged imperfections of actually existing human rights treaties give us reason to revise those treaties, rather than giving us reason to abandon the whole approach.

3. Can Human Rights be Localized? Unpacking the Vernacularization Process

Speaker: Sally Engle Merry (Anthropology, New York University)

Commentator: Samantha Besson (Law, University of Fribourg)

Having heard from a broad variety of philosophers, lawyers, political theorists, public policy theorists, and theorists of international relations, Sally Engle Merry presented the first contribution of the conference to come from the discipline of anthropology. Merry’s presentation concerned what she calls the ‘vernacularization’ process, whereby local populations come to understand their grievances, and to make claims for the redress of those grievances, in terms of the discourse of human rights, and in doing so typically come to use a hybrid vocabulary (or vernacular) that makes use of elements from both traditional and human rights discourses. Merry is especially interested in the social and psychological processes via which individuals come to see themselves as bearers of human rights, and the ways in which this process itself brings about transformations in subjectivity and self-consciousness. Merry’s research on human rights promotion among a number of groups of women encompassed ‘on the ground’ research at a variety of sites: in Beijing, Gujarat, Lima and New York City. In Gujarat, Merry studied a group of women who have constructed a form of local court for dispute resolution – the Nari Adalat – that has both a ‘human rights’ and a juridical component, emerging from the interplay of human rights discourse with local forms and customs. In the Nari Adalat, human rights-talk has helped to shape the development of the institution, but certainly does not wholly define it. Often, social movements appropriate human rights discourse as a way of adding punch to their demands, or as a way of presenting their demands to the courts – sometimes this is a matter of genuine ‘conversion’, other times of mere ‘window dressing’, but most often it is something more complex in between the two. Merry concluded her presentation by presenting two policy dilemmas that can be generated from an assessment of the anthropology of vernacularization. Firstly, the promotion of human rights faces a Resonance Dilemma: human rights-talk needs to resonate with local populations by finding points of contact with their own normative

understandings; but conversely, at the same time, the normative authority of the discourse of human rights is connected to its putative universality and freedom from local or traditional self-understandings. Secondly, there is also an Advocacy Dilemma, whereby human rights both need to connect to local self-understandings, whilst it is also the case that the transformative and emancipatory potential of the promotion of human rights is connected to its remaining separate from and different to local normative viewpoints.

Samantha Besson, in her response to Merry, raised the question of whether we should worry that human rights often end up, in effect, being “lost in translation” in the vernacularization process. In other words, may we not find many instances where the language of human rights has been appropriated in a particular context, but in a way such that the normative content of that language has been lost entirely? In raising this question, Besson also emphasized the difference between contexts where human rights law is ‘vernacularized’ specifically into local *law*, as against contexts where it is ‘vernacularized’ only into local practices or institutions of other kinds. Armed with an awareness of the complex anthropology of the translation and vernacularization of normative vocabularies, we must go on to answer important questions about the particular duties that might exist (falling on both human rights NGOs and on developing countries themselves), to contextualize human rights sensitively, without losing their normative content.

4. Paradoxes in Humanitarian Intervention

Speaker: Martha Finnemore (Political Science and Elliott School of International Affairs,
The George Washington University)

Commentator: Ryan Goodman (Harvard Law School)

The conference was brought to an end with Martha Finnemore’s presentation on the paradoxes of humanitarian intervention. Finnemore began with the central puzzling question about humanitarian intervention: why would a state expend “blood and treasure” to defend the citizens of some *other* state? Much of the literature treats humanitarian intervention as a myth, positing self-interested motives behind any putatively unselfish act. But Finnemore suggested that the truth may be somewhat more complex than such a ‘Realist’ picture would suggest. There are, to be sure, many mixed motives in this area, but those motives are not best explained, Finnemore argued, in purely self-serving terms. Humanitarian intervention took place in the 19th Century mostly in defense of others who were white and Christian. For the first time, perhaps, in the 1990’s, we began to saw

humanitarian intervention where the ‘human’ in humanitarian was imagined rather more widely, with intervention coming to the aid of non-white, non-Christian populations. The increase in humanitarian interventions is partly to be explained, Finnemore suggested, by virtue of increasing expectations of government performance, which has itself emerged with the spread of the international human rights regime and associated human rights activism. But these changing expectations have also in many ways made interventions more difficult, and less likely to succeed. As Finnemore puts it, the changed “normative structure” creates new problems, both political and operational, as when the increased value that is now placed on self-determination means that intervening powers no longer feel entitled to impose administrations on other states, but feel that they must work through local governments. Some of these constraints have placed militaries in very odd positions, to which they are ill-suited, and from which they do not have very clear exit strategies.

In his response, Ryan Goodman suggested the outline of what a more ‘Realist’ account of the rise of humanitarian intervention might look like. On Goodman’s view, a greater role can be assigned to the end of the Cold War, and the greater latitude for international military action which this then allowed to the United States as the world’s one remaining superpower. Rather than an explanation in terms of changes in the background “normative structure”, and the increasing ‘humanization of the other’, as one might call it, this rival explanation can instead simply appeal to the changing political and strategic costs of interventions. Moreover, Goodman also suggested that one can go a long way to explaining the emphasis placed on the significance of self-determination without appealing to normative assumptions – instead, one can simply point to the gains in terms of information and efficacy associated with strategies that co-opt local elites, rather than imposing quasi-colonial governments from above. If norms do make a difference, Goodman suggests, it may also be through mechanisms of mimicry and emulation, rather than because such norms are found to be appealing and persuasive. Goodman’s view was not that we can never appeal to ethical considerations in explaining strategic changes, but that we need to have a careful sense of the balance between material and ‘ethical’ explanations of shifts in foreign policies.