
Review

Human rights standards: Hegemony, law and, politics

Makau Mutua

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While advocates argue that, as gifts of the European Enlightenment to the world, human rights enable disenfranchised individuals to claim justice and rights, thereby helping the globe's 'silent majority' to find its voice, detractors view them with suspicion: as alibi for former colonial powers to exercise domination, while promising equality and emancipation. This echoes the warning of the black queer feminist Audre Lorde that 'The master's tools will never dismantle the master's house' (1984, p. 110).

Against the backdrop of the ambivalent relation of the postcolonial world to the legacies of European Enlightenment, Makau Mutua's book examines the emergence and effectiveness of international human rights standard-setting processes. He aims to identify possible new avenues in standard-setting so as to rectify past failures and setbacks, as well as to explore strategic options for future responses. The book opens by addressing the historical antecedents of the problem and the imperial origins of the international human rights regime. Outlining the genealogy of human rights corpus, Mutua explains that international law began as a Eurocentric project: a small exclusivist group of states from white and Christian Western Europe arrogated to themselves the term 'civilized' and thereby monopolized the standard-setting and norm creation. In Mutua's view, the cross-cultural legitimacy of any universal norms and standards resides in the process of being democratic, diverse and participatory, which the United Nations at its inception was not. UDHR, according to Mutua, was a case of 'global universalization without cultural legitimization' (p. 18).

Mutua goes on to engage with the historical, cultural and political subtext of the human rights corpus and highlights the different documents used to encapsulate norms, as well as the different bargaining techniques that characterize the process. While some human rights proponents lament the deceleration of the standard-setting forums and processes, others argue that adequate standards have been set in virtually all major areas; the real challenge is the implementation. Mutua discusses



various examples – disputes around right to development, torture, land mines, CEDAW and rights of IDPs (internally displaced persons) – to illustrate the contentious nature of human rights politics.

The most fascinating aspect of the book is the focus on the complex relation between states, NGOs and individuals. Mutua argues that the relation between states and individuals is both ‘symbiotic and oppositional’ (p. 12). Even as most human rights abuses are committed by a state domestically, ironically the first respondent to violations is the state itself. Only in the face of failure is international intervention justified to stop violence by a state against its own nationals. While transnational advocacy networks seek to curb how states govern their citizens, states are only willing to surrender authority over domestic affairs when it enhances their own legitimacy. In the face of the fear of shrinking state power and erosion of state sovereignty, states adopt various strategies, such as withholding ratification, non-participation and proposing reservation to delay the process of standard-setting. CEDAW, for instance, the historic women’s rights document, is a case in point. It contains the greatest number of reservations against any one document, thus illustrating the complexities of protecting women’s rights globally. Mutua points to the irony of removing the provision on non-discrimination in a treaty whose central purpose is to eliminate discrimination, and yet that is precisely what many states have done with CEDAW. In Mutua’s view, two factors – constraints on sovereignty and resources – determine a state’s attitude toward a norm. Suspecting human rights advocates of imperial designs, states in the global South see human rights as yet another weapon to diminish their sovereignty.

Mutua identifies areas where new standards might be necessary and provides suggestions to improve norm creation and transform standard-setting processes. According to him, UDHR suffers from a ‘democratic deficit’ because it is based on top-down, not ground-up norm making. The success or failure of a standard depends on who ‘owns’ it. While some lament that multiplicity of actors and diversity of states complicates standard-setting, Mutua argues that this is absolutely indispensable for the future of human rights. He underlines the importance of moving from the UN as the central site of norm creation to regional standard-setting that would dispel suspicions of Eurocentrism. The question is whether the West and its liberal tradition is hospitable to contributions by other traditions and cultures. Advocates of Western leadership as essential to the enforcement of human rights argue that, without a few leading states protecting human rights, many violator states may feel empowered. Against this, Mutua gives the example of the ICC, which was supported by many African countries and opposed by United States, China and Israel. And yet, the myth of Africa as the site of maximum human rights violations persists, this continent being the target of virtually all ICC prosecutions (p. 48). In fact, United States’ ambivalent relation to international law and human rights law has emboldened other non-democratic regimes.



In an innovative move, contrary to the mainstream juxtaposing of the evil state versus the good civil society, Mutua focuses on the coercive role of INGOs in Eurocentric standard-setting. INGOs, committed to liberal values, have historically shown a preference and bias for some rights over others. In Mutua's view, one of the fundamental flaws of the logic of the official human rights movement is the vision of man as an individual egoist (p. 15). Mutua questions Samuel Moyn's approach to human rights in their atomistic, individualized sense, which is discontinuous with the idea of collective rights. Mutua argues that the legitimacy of human rights can be enhanced by expanding its normative reach beyond the liberal understanding of individuals as bearers of rights. Given that the values promoted by human rights politics are consistent with the Western liberal tradition, they avoid rights struggles that contest the principle of free market. UDHR, the ICCPR and ICESCR do not use the terms 'capital', 'market', 'colonialism' or 'imperialism' (p. 168). Thus, for example, religion and not economic injustice is coded as the biggest obstruction to women's human rights. Mutua points out that, until recently, INGOs like Amnesty International and Human Rights Watch have failed to engage with issues of global poverty and have instead selectively focused on civil and political rights. Furthermore, voting rights in INGOs like Amnesty International are allotted according to paid membership, whereby wealth determines voting power (p. 122).

Mutua argues that it is imperative to focus on the power differentials between INGOs and NGOs in the South, with INGOs having an advantage in terms of resources, including travel, lobbying, communication and mobilization. At times, domestic NGOs lack adequate expertise in international law and are thus unable to be an effective advocate for their interests. In Mutua's view, domestic NGOs in the South are necessary where states are unable or unwilling to perform the functions of statehood. Paradoxically, by virtue of being unaccountable to the public, NGOs can be efficacious, even as states may be more willing to share governance with domestic NGOs and less likely to delegitimize their interventions as Eurocentric and paternalist.

While foregrounding the contributions of domestic NGOs, Mutua also highlights that the righteous fervour with which they speak masks a total lack of democratic legitimacy. Human rights scholars and activists present themselves as driven by nobility and messianism and divorced from self-interest and partisanship. However, many domestic NGOs are urban-based and elitist, often serving as fronts for powerful interests and distanced from the people on whose behalf they are advocates. Pointing an accusing finger directed at the state, NGOs deflect from their own coercive agendas.

Returning to themes in his earlier work, Mutua argues that, to be operationalized, human rights standards draw on the vocabulary of 'victims' and 'villains' (p. 62). Human rights are compared to antibiotics that would cure the problems plaguing the non-Western world, irrespective of whether the patient is Asian, African or Latin American. The arrogant benevolence of the West reflects the



deeply entrenched ‘saviour’ mentality of the human rights missionaries (p. 57). Historically, ‘victims’ have not been involved in standard-setting; rather, INGOs function as powerful brokers in an elite-driven process. States in the global South compete with NGOs for Western funding, while NGOs villainize the state to legitimize their transnational advocacy.

With the North ‘owning’ the organs of international governance and mobilizing the UN to police the world, human rights are seen as a historical continuum of the civilizing mission. Mutua warns that human rights missionaries need to urgently unlearn colonialist attitudes and abandon their vanguardism. To become meaningful for societies that depart from Western models of secularism and liberalism, human rights politics must overcome Eurocentric cultural biases and address economic injustice. Only when subaltern groups have a stake in standard-setting will the legitimacy of human rights be entrenched.

With excellent examples and incisive analysis, Mutua’s work is a powerful critique of the current human rights project, especially the alliance between human rights movement and the foreign policy objectives of the West. Drawing on the contribution of Third World Approaches to International Law, Mutua’s is a compelling effort to transform human rights from a horizontal into a vertical conversation. My only disappointment is that the term hegemony in the title is not really explicated in the book. Otherwise, it is highly recommendable for those interested in how human rights are like *pharmakon*, namely both poison and medicine (Derrida, 1981). The challenge is to turn poison into medicine so that the master’s tool can be employed to dismantle the master’s house (Dhawan, 2014).

References

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