

The Antagonistic Relationship between Sovereignty and Human Rights

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In liberal democratic countries, many people take their rights—especially their human rights—for granted. However, in several parts of the world human rights violations continue to persist. While guaranteeing basic human rights may seem like a policy which all states and societies can support, it remains a highly contentious issue. Central to the debate is the issue of sovereignty. In other words, when, if ever, states are justified, or perhaps even obligated, to intervene in another country's internal affairs to assure the protection of human rights. This issue is further complicated by the high degree of subjectivity in determining the protections individuals are allotted by the term "human rights." Jack Donnelly believes that human rights are simply, "the rights that one has because one is human."¹ Unfortunately, even this relatively pragmatic definition of human rights has at times been contested. For the purposes of this paper, a broad definition of human rights will be assumed, that of the *Universal Declaration of Human Rights* which states that "all human beings are born free and equal without regard to race, sex, language, religion, political affiliation, or the status of the territory on which they were born."² This definition of human rights is arguably the most practical firstly, because the omission of any of these categories could allow for grievous injustices to go unpunished, and secondly, because it is this definition which has proven most discordant with state sovereignty. While the principles of sovereignty such as non-intervention and human rights may seem complimentary, state sovereignty, as a result of its theoretical underpinnings, the norms it has established, and its practical

applications, has demonstrably hampered the implementation of human rights.

While at one time state sovereignty was viewed as a method of facilitating and maintaining peace, it is arguably this assumption which has hampered many attempts to totally revamp the notion of sovereignty.³ One possible explanation of the continued reluctance of states to intervene in other countries' internal affairs could be the situation under which state sovereignty was born. As Sens and Stoett explain, state sovereignty came about largely as a result of the Peace of Westphalia—which put an end to the 'Thirty Years' War in Europe.⁴ Prior to the Peace of Westphalia, it was commonplace for religious groups to intervene in the internal affairs of other states.⁵ In an attempt to limit the devastation and wars that came about as a result of external intervention, the Peace of Westphalia was signed.⁶ It was one of the first formal recognitions of state sovereignty.⁷ The signatories believed that such recognition would serve as a mechanism of peace by creating "territorial states" which were in control of their own domestic affairs.⁸ As Stephen D. Krasner states, "Westphalian sovereignty ... refers to the autonomy of domestic authority structures—that is, the absence of authoritative external influences."⁹

Thus, the principle of state sovereignty is derived from the belief that non-intervention in the internal affairs of states is the best policy to promote or, at the very least, maintain international peace.¹⁰ While this may have been an acceptable practice in the seventeenth century, conventional norms regarding civil rights and, more broadly, human rights have

¹ Jack Donnelly, *Universal Human Rights in Theory & Practice*, 2nd ed. (New York: Cornell University Press, 2003), 7.

² Joshua S. Goldstein and Jon C. Pevehouse, *International Relations: 2006-2007 Edition*, 7th ed. (New York: Pearson, 2007), 288.

³ International Commission on Intervention and State Sovereignty, *The Meaning of Sovereignty*, <http://www.iciss.ca/report2-en.asp#sovereignty> (Jan. 22, 2009).

⁴ Allen Sens and Peter Stoett, *Global Politics: Origins, Currents, Directions*, 3rd ed. (Toronto: Nelson, 2005), 48.

⁵ Sens and Stoett, 48.

⁶ Sens and Stoett, 48.

⁷ Sens and Stoett, 47-8.

⁸ Sens and Stoett, 48.

⁹ Stephen D. Krasner, "Problematic Sovereignty," in Stephen D. Krasner, ed., *Problematic Sovereignty: Contested Rules and Political Responsibilities* (New York: Columbia University Press, 2001), 2.

¹⁰ <http://www.iciss.ca/report2-en.asp#sovereignty>.

changed.¹¹ This is evident in such documents as the *Universal Declaration of Human Rights*, the *Convention on the Prevention and Punishment of the Crime of Genocide*, and the *International Covenant on Economic, Social, and Cultural Rights*.¹² Westphalian sovereignty no longer provides (and most likely hinders) a conception of human rights that is consistent with the previously mentioned documents. Violations of human rights continue to persist, and the perpetrators continue to claim that they are sovereign over the internal policies of their state.¹³ In such cases, reaction is often limited to measures such as economic sanction, political condemnation or, potentially, military action.¹⁴ Each of these measures has benefits; however, each can also further exacerbate strained inter-state relations. Hence, a theoretical paradox arises: while respect for state sovereignty may further international unity, it can also undermine the foundations of human rights. By asserting that states should not be subject to “authoritative external influences” (e.g. influence from other states or international organizations) Westphalian sovereignty places limits on other states’ abilities to protect human rights outside their borders.¹⁵

A recent example of this is the war conducted by Russia against its Chechen population. During the course of the conflict, Russia was reported to have violated several human rights through its use of “extrajudicial executions”, torture, and rape against the Chechen insurgents, as well as the Chechen population at large.¹⁶ These acts are, at least by the United Nations’ (UN) standards, clearly violations of human rights on the basis of sex, religion, and the “status of the territory on which” one was

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born.¹⁷ Despite these flagrant transgressions on the part of Russia, the European Union (EU), whom many expected to intervene, was relatively silent on the matter.¹⁸ This, some speculated was the result of the European Union’s interest in fostering a “strategic” partnership with Russia.¹⁹ As Andrew Osborne argues, the EU “knows that to voice its own opinion on Chechnya is not without risk.”²⁰ Accordingly, there is a disconnect between the theoretical foundation of sovereignty (preventing conflict) and the preservation of human rights. Indeed, by respecting Russia’s internal sovereignty, the EU has managed to evade the serious economic

and diplomatic repercussions that could accompany taking a stronger stand.²¹ However, can it truly be maintained that non-intervention is the best policy when it allows encroachments on fundamental human rights and freedoms to continue? In this case, it seems that respect for state sovereignty stands in direct opposition to human rights.

In addition, sovereignty has further burdened human rights in the way it has framed interstate dialogue and the options which other states believe they have when peoples’ rights are denied. As Andrew Moravcsik argues, “human rights regimes are not generally enforced by interstate action. Although most arrangements formally empower governments to challenge one another, such challenges almost never occur.”²² It would seem that just as human rights and actions

¹¹ Sens and Stoett, 334.

¹² Sens and Stoett, 334.

¹³ Goldstein and Pevehouse, 287.

¹⁴ Goldstein and Pevehouse, 288.

¹⁵ Krasner, 2.

¹⁶ Amnesty International, *Chechnya – human rights under attack*, <http://www.amnesty.org/russia/chechnya.html> (Jan. 19, 2009).

¹⁷ Goldstein and Pevehouse, 288.

¹⁸ Andrew Osborne, “The EU’s Chechnya Challenge,” *Guardian* [UK], Nov. 7, 2003, <http://www.guardian.co.uk/world/2003/nov/07/worlddispatch.russia> (January 22, 2009).

¹⁹ *Guardian*, Nov. 7, 2003.

²⁰ *Guardian*, Nov. 7, 2003.

²¹ Goldstein and Pevehouse, 289.

²² Andrew Moravcsik, “The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe,” *International Organization* 54 (April, 2000): 217.

regarding them are shaped largely by norms, so too is state sovereignty. State sovereignty, by virtue of having preceded contemporary conceptions of human rights, underwent a process of reification long before human rights norms even existed. Moreover, even the United Nations—an advocate for human rights—recognizes state sovereignty.²³

In recent years, the protection of human rights (even if in rhetoric only) has become a standard practice of many states. While the protection of human rights is one of the current goals of some western democracies, the same could be said of sovereignty in the past. Informal conventions, by their very nature, are perpetually shaped and reshaped by state actions and perceptions of what is acceptable. Given sovereignty's chronological advantage over human rights, it is perhaps even more firmly entrenched in the actions of governments. Arguably, the principle of Westphalian sovereignty still plays an important role, even if only subconsciously, in the way states frame problems and view the set of policy options available to them. The degree to which governments value sovereignty is shown in United Nations peacekeeping operations.²⁴ Even in cases where the government is not at fault—where the violators of human rights are internal factions—the seemingly neutral act of undertaking peacekeeping operations requires consent of the affected state.²⁵ The requirement of consent to engage in peacekeeping operations demonstrates that despite commitment to human rights, respect for another state's sovereignty takes precedence over enforcement of human rights.

The Rwandan genocide typifies the way in which state sovereignty restricts the policies that governments will consider in the wake of human rights violations. Samantha Power demonstrates that even after reports of widespread genocide and chaos, the United States (US), once having evacuated its diplomats, saw no role for itself in the country: having paid the price for meddling in the

domestic affairs of Somalia, it would not make the same mistake again.²⁶ Furthermore, even within the international community there was very little support for UN intervention.²⁷ Almost any attempt to intervene was thwarted and when a UN force was finally deployed, it lacked the size and strength to make any substantive difference: a result of lukewarm international support.²⁸ The UN peacekeeping force was further weakened when Belgium, due to popular backlash, withdrew the majority of its forces.²⁹ The Rwandan example demonstrates that despite international support for human rights, states are still very apprehensive about intervening into the affairs of other states. Furthermore, as Belgium's actions indicate, even when promoting such lofty goals as the prevention of genocide and the protection of human rights, popular support for such initiatives is, at best, fleeting. Citizens in democratic countries are especially wary of any attempt to intervene in what they view as a primarily domestic issue of another state, especially when such intervention leads to the death of its own military personnel.

In addition to shaping the way both governors and the governed view international human rights abuses, sovereignty has further buttressed the imposition of human rights upon 'Non-Western' governments, particularly those that are undemocratic or non-secular in nature. While few citizens of any liberal democracy would argue that people should be discriminated against on the basis of race, sex, language, or religion, the point is, that these are citizens of democratic (usually 'Western') governments. However, what if, far from denouncing discrimination on such grounds, government allowed it, and even institutionalized it?

The basic premise upon which liberal democracies rest, and more specifically, the civil rights of such countries, is that peoples' beliefs, opinions, and

²³ <http://www.iciss.ca/report2-en.asp#sovereignty>.

²⁴ Sens and Stoett, 265.

²⁵ Sens and Stoett, 265.

²⁶ Samantha Power, "Bystanders to Genocide," *The Atlantic*, <http://www.theatlantic.com/doc/200109/power-genocide> (Jan.20, 2009).

²⁷ <http://www.theatlantic.com/doc/200109/power-genocide>.

²⁸ <http://www.theatlantic.com/doc/200109/power-genocide>.

²⁹ <http://www.theatlantic.com/doc/200109/power-genocide>.

actions, even if we do not agree with them, are their own, and as such, should be permitted so long as they do not endanger, or discriminate, against anyone else. As John Stuart Mill argues, “When a person’s conduct affects the interests of no persons besides himself [sic], or needs not concern them unless they like,” that person should have the “freedom ... to do the action.”³⁰ The fundamental rights championed in the *Universal Declaration of Human Rights* and generally those that make up any evaluation of human rights, are essentially liberal views.³¹ The right not to be discriminated against on the basis of any of the enumerated grounds above seems to tacitly acknowledge the right to ‘cultural relativism.’³² This being said, can liberal democratic countries truly reject internationally, what in practice, they accept domestically? Nowhere is this dissonance between liberal human rights and the cultural traditions of existing societies more apparent than in Islamic states.

In many Islamic countries, the values of both moderate and fundamentalist Muslims stand in direct contravention to liberal notions of rights and freedoms. Many of these societies are patriarchal in nature, condemn any form of pre- or extra-marital promiscuity, outlaw any faith apart from Islam, and have limited gender equality. While most inhabitants of liberal democratic countries might find these practices, even in their mildest forms, archaic and fundamentalist in nature, there is no more legitimacy to ‘our’ claim of what is right and just than there is to theirs. In contrast, many ‘non-western’ governments view the spread of universal human rights as a form of “Western moral imperialism”.³³ While liberal thought may justify its beliefs about human rights on basis of humanistic notions of ‘self-actualization,’ international conventions, and perhaps even conceptions of the ‘state of nature,’ Islamic states can rebut these claims with an appeal to cultural relativism and the writings of the Quran. Furthermore, Islamic states

can appeal to what is, perhaps, a more widely accepted concept than the aforementioned arguments: the notion of state sovereignty.³⁴ In the absence of any objective, absolute, moral values, neither side can claim to have the ‘correct’ conception of human rights. As a result, the appeal to state sovereignty supersedes the enforcement of human rights conventions.

Despite some progress in the spread of human rights, respect for states’ sovereignty continues to take precedence. The mass dissemination of human rights continues to be slowed by the Westphalian understanding of sovereignty. States’ internalization and reification of sovereignty has only exacerbated the situation. However, the first step has already been taken by redefining sovereignty. On the issue of sovereignty, Kofi Annan maintains that, “States are now widely understood to be instruments at the service of their peoples, and not vice versa.”³⁵ This view is further complimented by the Pugwash paper which, in trying to rework sovereignty, stated that, “sovereignty is not -- and has never been -- an unlimited power to do all that is not expressly forbidden by international law”.³⁶ By adopting the human-centric view of Annan and supplementing it with the latter view of limited power, a new approach to state sovereignty emerges. This approach recognizes that sovereignty is for the benefit of the people, not the state, that sovereignty is not simply a mechanism to avoid international conflict, but rather, internal human rights abuses as well. This approximation of sovereignty not only nullifies the assumption that sovereignty is to avoid internal conflict but, in the process, provides a break from traditional notions of sovereignty that continue to structure international action. However, while progress towards the acceptance of universal human rights is being made, it is still far from being accepted and Westphalian sovereignty remains sovereign.

³⁰ John Stuart Mill, *On Liberty and Other Essays* (New York: Oxford University Press, 1998), 84.

³¹ Sens and Stoett, 332-33.

³² Sens and Stoett, 333.

³³ Michael Ignatieff, “The Attack on Human Rights,” *Foreign Affairs* 80 (November-December, 2001): 102-03.

³⁴ <http://www.iciss.ca/report2-en.asp#sovereignty>.

³⁵ Kofi A. Annan, *Two concepts of sovereignty*, United Nations <http://www.un.org/News/ossg/sg/stories/kaecon.html> (Jan. 20, 2009). [Original Source: *The Economist*, September 18, 1999].

³⁶ Alain Pellet, *State sovereignty and the protection of fundamental human rights: an international law perspective*, Pugwash Online: Conferences on Science and World Affairs, <http://www.pugwash.org/reports/rc/pellet.htm> (Jan. 19, 2009).