1. Expanding human rights

Alison Brysk

In the 21st century, the human rights repertoire established during the post-war years is necessary but not sufficient for global governance of an expanding range of abuses. In the second generation, human rights is caught between realist, structural and multicultural critiques that rights are not enough. On the one hand, critics contend that the classic corpus of rights does not attend to the most vulnerable populations and emerging forms of exploitation – and conversely, that even conventional rights cannot be enforced or fulfilled. To meet these challenges, this project analyses dynamic expansions of the norms and mechanisms of human rights that have emerged in practice. We will chronicle the mobilization of new actors, new rights claims, new institutions and channels of leverage, and new modes of accountability.

We respond to the challengers with affirmative evidence of new mechanisms for enforcing existing rights and new strategies for claiming rights for new populations and processes. As we examine the potential and limitations of these expansions of the horizon of human rights, we will assess how an expanded notion of human rights can lead to new possibilities for reform – and where it still falls short. Our analysis is multi-disciplinary, multi-method, with balanced attention to civil-political and social-economic rights, and draws from a full range of global experience, including cases from Asia, Europe, Africa, and Latin America.

WHAT'S WRONG WITH RIGHTS?

After decades of development, the international human rights regime is under siege in theory and practice. The human rights regime consists of a set of interlocking claims, practices, and institutions that seek freedom, equality, and human dignity, codified in a set of core treaties that establish a normative consensus on minimal standards. In the generation since the 1994 Vienna Conference concluded that human rights are “universal, indivisible, and interdependent,” human rights standards, movements,

and mechanisms have been extended to embrace a majority of the world's population and almost every aspect of the human condition – at least in theory. The power of human rights has been associated with the democratization of dozens of states, the rescue of many thousands of political prisoners and refugees, and the protection and empowerment of millions of members of vulnerable groups.

But these gains have been uneven, and rights have stumbled on sovereignty, statelessness, and structural oppression. The age of rights has not forestalled genocide, war crimes, forced displacement, resurgent authoritarianism, contemporary slavery within and across borders, deprivation of basic needs, or gender-based violence. Critics of theory and history trace these shortfalls in rights to their basis in Enlightenment liberalism, state-centric enforcement, disregard of economic structures, and alleged Western bias. Thus, there are challenges to the historical exclusions of human rights (Charlesworth, 2005), human rights dependence on international law (Posner, 2014), the relationship between rights promotion and humanitarian intervention (Barnett, 2011; DeWaal, 1997), cultural constructions and projections of rights norms (Goodale, 2009; Stern and Straus, 2013), the bureaucratic politics of human rights organizations (Hopgood, 2013), appropriations of human rights discourse by neo-liberal and security states to subvert empowerment (Postero, 2007; Tate, 2007), distortions of transitional justice (Meister, 2012), and systematic political barriers to implementation (Ignatieff, 2001).

However, a more revisionist sociological approach sees rights as sound in theory but rather skewed in practice, and focuses on restructuring incentives and institutions to close the compliance gap and extend the reach of rights to the full range of violators (Risse, Ropp, and Sikkink, 2013). Rather than critiquing rights as problematic natural law, we see rights as a political construction: a contested and evolving basis for mobilization and empowerment with the capacity for counter-hegemony in a liberal world order (Beitz, 2009; Goodhart, 2012; Hiskes, 2014; Nussbaum, 2000).

In that tradition, in this project we seek to analyse and extend the range and reach of rights. Rights must expand above and below the state to the power relations of globalization and “private wrongs” of non-state actors, and widen the community of rights-bearers from dominant citizens to include all subjects of power. This means that our best strategy for expanding rights is to build upon the dynamic practice of the global community, which continues to transcend the limitations of rights by crafting new norms, campaigns, and enforcement strategies.

Our analysis thus extends human rights scholarship that moves beyond law as the foundation of the regime to a more multi-faceted complex of

foreign policy, campaigns, and other forms of global governance. Across this project, we take law as a possible means to the realization of rights, not an end or sufficient goal. Overall, our project builds the case for a sociological and strategic analysis of law and the shifting relationship between international norms, transnational mechanisms, and state implementation (Brysk, 2013b). The path from norms to fulfillment may involve some combination of domestic implementation, civil society empowerment, transnational socialization, and global accountability.

CONSTRUCTING RIGHTS

All human rights campaigns must work to establish standards of violation, legitimate bearers of rights, responsibility to address human rights claims, and implementation mechanisms. But beyond the established human rights model, for “private wrongs” committed by non-state actors and transnational forces, rights campaigns must work to identify new rights standards, find new leverage points, and establish new responsibilities for states and global governance. As a social imaginary, a political doctrine of human rights must answer three questions (Brysk, 2005): Who is human? What is right? And who is responsible?

The history of human rights is an expansion of rights-bearers from white male Christian property-owning citizens towards universalism, progressively incorporating slaves, women, refugees, workers, ethnic, religious, and sexual minorities. But rights still struggle to incorporate “people out of place” who stand outside the citizenship order or those who demand protection and empowerment from non-state actors (Brysk and Shafir, 2007). In the 21st century, some of these populations have gained greater capacity to mobilize for rights, notably indigenous peoples, sexual minorities, and global workers. The passage of new United Nations and regional instruments and resolutions for indigenous rights, economic migrants, domestic workers, and LGBT non-discrimination testify to both the expansion of rights subjects and the incorporation of new sectors of global civil society. The chapters by Felipe Gómez Isa, Kiyoteru Tsutsui, and Phillip M. Ayoub discuss the construction and recognition by global governance of new movements for indigenous peoples, descent-based discrimination, and sexual minorities.

Meanwhile, the broadening domain of power relations in a globalized world demands and inspires new claims for rights and governance. Patterns of development in the 21st century highlight the salience of access to basic resources such as food and water to fulfill long-recognized economic and social rights to life and health. Growing recognition of gender violence in

wartime, urban streets, and families highlights the gap between women's rights and physical security in public, private and cross-border spaces. Madeline Baer's treatment of water suggests conversely that globalization is the predominant challenge to realization of the right to water. Alison Brysk's discussion of expanding claims for women's security from sexual violence highlights a gendered gap in core physical integrity rights in the international regime and the interdependence of security with the most fragile reproductive rights. Michael and Cynthia Stohl profile the development of corporate social responsibility as an economic and social rights norm, accountability regime, and response to global civil society campaigns.

Even as global governance grapples with enforcement mechanisms for both established and emerging rights through international law, diplomacy, and transnational action networks, the human rights regime has also expanded its reach. New and strengthening remedies for human rights include regional institutions, new pathways of domestic and grassroots appeals, and rights-based foreign policy promotion. On the affirmative side of foreign policy promotion, Valerie M. Hudson outlines the emergence of feminist foreign policy as a rights-based bilateral strategy for empowerment. At the multilateral level, Wayne Sandholtz considers the value added by regional organizations to extend the reach of rights, deepen horizontal accountability, and transcend cultural claims against universalism. At the domestic level, Shareen Hertel shows horizontal expansion of food rights claims that circumvents weak international mechanisms and reinforces citizenship.

Finally, we must consider who is responsible for fulfilling new rights claims and enforcing rights in ungoverned domains of power relations. Beyond the state, new addressees for global governance and rights violations include transnational corporations, sub-national rebel groups, and international organizations themselves. In the absence of true global government, international institutions may still exercise authority as peacekeepers, aid providers, economic managers, or even transitional governments in post-conflict states – and with such power comes the potential for abuse. At a more structural economic level, Claire Apodaca considers how and when human rights standards extend further to international organizations' economic programs that affect basic rights of children's survival. On the war crimes side of the rights agenda, Hyeran Jo and Joshua Alley show the expansion of human rights accountability to non-state militaries that exercise authority in conflict zones. Meanwhile, Rhoda E. Howard-Hassmann's contribution shows how state sovereignty remains a barrier to the right to food highlighting the limits to expanding responsibility in an inter-state system.

These pathways to constructing rights through norms, claims, mechanisms, and responsibilities are interdependent in practice and reveal common themes for analysis. Baer's exploration of water involves new norms, actors, and responsibilities at the same time – yet she shows that norm promotion and mobilization for water as a human right are a necessary condition for proposing new responsibilities for non-state actors to provide access to water. The new role of meso-level regional institutions cuts across Sandholtz's discussion of domestic incorporation of human rights law, inter-American norms for marginalized groups discussed by Brysk and Gómez Isa, and Ayoub's chronicle of European Union norms as mobilizing opportunities for LGBT movements in recalcitrant states. Thus, we must consider the regional venue of global governance as a source of new claims, empowerment of actors marginalized in their own states, and enforcement mechanisms at the same time – and assess the panoply of regional organizations for their ability to play this range of roles. Moreover, in most of our cases, there is an interplay between identities and institutions: for Ayoub, Hertel, Tsutsui, Gómez Isa, Brysk, Hudson, and sometimes Jo, a mobilization based on a marginalized identity requires new forms of access, accountability, and enforcement.

EXPANDING RIGHTS

What then can we learn from our survey of new pathways for expanding rights that can inform human rights scholarship and practice? First, we see that our chronicle of new claims and mechanisms must engage and extend the existing literatures on the struggle for new rights norms (Brysk, Baer, Hertel), global civil society (Ayoub, Tsutsui), and compliance (Gómez Isa, Sandholtz, Jo). In each case, we add new dynamics to the relevant literature. For new norms, Brysk and Baer suggest that movement framing now includes crafting new frames, Baer and Hertel show that advocates may not be traditional human rights groups and can transcend traditional gatekeepers, and Hertel shows vernacular alternatives to norm diffusion. On global civil society, Ayoub and Tsutsui depict horizontal transnational networks and multi-level appeals that go beyond the boomerang effect of pressure from above and below the state. In terms of compliance, Gómez Isa and Sandholtz add to the repertoire of enforcement the adoption of international legal norms as “benchmark” or reference points, while these authors along with Stohl and Stohl and Jo add to the fulfillment pathway the power of recognizing new stakeholders or new standing.

Next, several of our authors expand the conventional picture and counter the critique of human rights as a hegemonic or Northern agenda.

Hertel, Baer, and Tsutsui depict the creation of new norms from below, while Sandholtz and Stohl and Stohl consider alternatives to US power for enforcement. The interdependence of civil-political and bodily integrity rights with social-economic rights theorized by Howard-Hassmann is also central to the analysis of Baer, Hertel, Apodaca, and Gómez Isa. Our assessment of the potential for these new forms of the power of human rights beyond the conventional agenda ranges from Hertel's positive innovation to Howard-Hassman's pessimistic evaluation of nationalist manipulation in the global South.

To account for these variations, our investigations deepen the conventional wisdom and push beyond. In our cases, the type or status of rights matters for new claims: Are the rights claimed individual or collective? Derogable or absolute? Historic or innovative? This is true across Sandholtz's cases of regional jurisprudence, Tsutsui's Japanese ethnic mobilizations, and Brysk's reproductive rights gap alike. In general, more collective, derogable and innovative rights are most resistant to expansion.

Another consideration that helps to advance our analysis is comparative context. In many cases, rights are not the only kind of claims, and rights compete with or borrow from alternate frames of security, development, corporate responsibility, humanitarian, and national identity norms. This is characteristic of problems for Hudson, Baer, Stohl and Stohl, Hertel, and Apodaca. But in each of these cases, a broader repertoire of claims seems to facilitate broader initiatives and coalitions.

Most rights struggles occur at multiple levels. Even as the chapters stress less studied meso or local levels of analysis, we frequently find that state sovereignty remains an impediment or at least a filter for expanding rights. At the state level, rights claims are enabled, blocked, complemented, or in some way transformed by citizenship for Howard-Hassmann, Hertel, and Ayoub.

Overall, we witness more expansion of claims and pathways than responsibilities. A dearth of duty-bearers, distorted incentives for compliance, and blocked pathways to fulfillment are the limiting factors in most of our cases. We will see this limitation grow in the course of the volume, as the emergence of new actors and frames often founders on old governance dilemmas.

In most cases, rights expansion encounters backlash, resistance, counter-frames, or silences, and this is a critical determinant of the success of new campaigns and mechanisms. Baer, Tsutsui, Ayoub, Gómez Isa, Brysk, Howard-Hassmann, Hudson, and Sandholtz all report important levels of challenge and even counter-mobilization to rights initiatives. In all of these cases, as emphasized by Hudson and Sandholtz, the political process of rights initiatives becomes a significant resource or impediment – above and beyond the content and subjects of rights.

This leads to our key conclusion: process matters. Even as we expand rights, we must continue to defend and deepen rights won in a previous era, and new claims and responsibilities depend on older forms of empowerment and accountability: from citizenship to anti-discrimination norms. Moving forward, our contributors will evaluate the potential of evolving processes by asking:

- Does the process empower new or different actors?
- Are new norms sustainable and resilient to challenges and competition?
- Do new processes cumulate, complement or compete with prior practices?
- How do new forms of leverage and accountability address the shifting power relations of globalization?

If we can chart the potential, limitations, and implications of these unexpected expansions of rights, this project may provide a resource for the next wave of the process by the next generation of human rights activists. To begin, we unfurl a fresh map to chart our explorations of the new frontiers of the quest for human dignity.

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