



City Research Online

City, University of London Institutional Repository

Citation: Gilder, A. ORCID: 0000-0002-8861-1433 (2018). Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), Human Rights Futures. *Human Rights Law Review*, 18(2), pp. 390-396. doi: 10.1093/hrlr/ngy011

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

Permanent repository link: <https://openaccess.city.ac.uk/id/eprint/22642/>

Link to published version: <http://dx.doi.org/10.1093/hrlr/ngy011>

Copyright: City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

Reuse: Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press, 2017, 344pp, £75) ISBN 9781107193352 (hb).

This edited collection is a timely amalgamation of four critiques of the future of human rights. The contributions are orientated around these four critiques, referred to as ‘scope conditions’, ‘backlash’, ‘localisation’, and ‘utopias and endtimes’. In *Human Rights Futures*, interlocutors from the fields of political science, history, and anthropology explore whether human rights have improved, why have they improved or why they have not improved, and what alternatives exist to counter human rights threats, or whether we should cut our losses (p 23). Many of the chapters explore how the current course of human rights mobilisation might lead to a future of ineffectiveness, ambivalence, failure and irrelevance if innovative steps are not taken to tackle the threat posed by the above critiques (p 2). The balanced discussion in *Human Rights Futures* make this edited collection prudent reading for those interested in the ‘where have we come from?’ and ‘where next?’ for international human rights law (IHRL).

The Introduction, authored by the editors,¹ defines the aforementioned four critiques, outlining first that ‘scope conditions’ are the favourable conditions for the successful mobilisation of human rights activism. Scope condition scholars are pragmatic in their view that human rights cannot be realised overnight and peace or work to create the institutional capability in a state to make rights adherence feasible must come first (p 17). Second, ‘backlash’ is where states have pushed back against human rights encroaching on their autonomy by creating alternate value systems or reinterpreting the demands of rights (p 18). Backlash is becoming prevalent in both major and middle powers such as; the US, Russia, China, Turkey, Kenya, and Egypt.² Third, ‘localisation’ delves into how local interpretations of human rights effects its universalistic language. Localisation includes the increasing demand for vernacularisation where the promotion of rights outside Western democracies is translated into normative alternatives based on local culture (p 20). Lastly, the collection delves into ‘utopia’ and ‘endgame analyses’ posing questions that include, can human rights survive in the absence of US and Western European hegemony replaced by illiberal powers? Has a wrong turn been taken by using human rights language and instead can national self-determination and socialism offer more progress? (p 21-2).

In Chapter 2, Dancy and Sikkink examine whether human rights processes such as legal mobilisation, transnational advocacy, and social movement resistance have provided positive outcomes for human rights. Dancy and Sikkink argue that the use of human rights processes can *create* the conditions for change leading to greater human rights outcomes as opposed to the argument that those conditions must already exist for human rights processes to succeed (p 43). The chapter makes use of data sets to evidence its claims such as the Political Terror Scale (PTS), Cingranelli-Richards Human Rights Data Set (CIRI), and Fariss’s Global Latent Respect for Physical Integrity. Using those data sets the authors conclude that respect for physical integrity has in fact increased, contrary to traditional data sets which evidence stagnation (p 29-32).

¹ Stephen Hopgood is Professor of International Relations at SOAS, London, Jack Snyder is Robert and Renée Belfer Professor of International Relations at Columbia University, New York, and Leslie Vinjamuri is Senior Lecturer in International Relations at SOAS.

² Pushback examples are expanded on in Wuerth, ‘International Law in the Age of Trump: A Post-Human Rights Agenda’ (Lawfare, 14 November 2016) available at: <https://www.lawfareblog.com/international-law-age-trump-post-human-rights-agenda> [last accessed 12 January 2018]; Thomas Kellogg, ‘China Is Getting Better at Undermining Global Human Rights’ (Foreign Policy, 18 October 2017) available at: <http://foreignpolicy.com/2017/10/18/china-is-getting-better-at-undermining-global-human-rights/> [last accessed 12 January 2018].

Dancy and Sikkink associate the Human Development Index with the measurement of social and economic rights and argue those rights have been evidenced as improving, bar a few exceptions, which contradicts the view of some that human development is in a state of decay (p 32-3). The authors explain that major international advocacy groups tend to prioritise civil and political rights, but local groups are more diverse in their concern for economic and social rights (p 35). A handful of examples are given rather than grounding the claim in empirical evidence. Finally, Dancy and Sikkink highlight that differences between large international organisations and mass movements are beginning to disappear due to informational technology allowing more effective local networking (p 40-1). This is an important aspect of the world we live in, the kaleidoscopic world.³ Developments in information technology lead to greater organisation of people, the rapid creation of networks, and dissemination of information, which gives improved conditions for effecting change in human rights outcomes.

In Chapter 3, Simmons and Strezhnev set out to counter the claims that IHRL has not improved the enjoyment of rights. They pose the following questions: Has the focus on human rights drawn attention away from economic development or social justice? Have obligations from IHRL only resulted in less visible repression? In the case of the strategic substitution hypothesis, the authors examine CIRI data to uncover whether there is empirical evidence for this practice by states. The authors create two regression models, one for the CIRI scores since 1980 of states that have ratified the ICCPR and another for states which have not (p 74). The authors discover that disappearances, for example, are stable in both models whereas the other indicators (freedom of speech, association and religious freedom) trend downwards denoting more violations (p 73). Simmons and Strezhnev explain that this outcome is the opposite of what would be expected if strategic substitution is in fact widely used, although the practice could exist in a small minority of states (p 75-6).

With regard to human rights proliferation resulting in the neglect of development efforts, Simmons and Strezhnev present evidence from the OECD database that in fact economic and social aid is far higher on average than human rights assistance (p 78). Furthermore, the authors map the ratification of human rights treaties alongside the log of GDP per capita.⁴ Simmons and Strezhnev find that states which have ratified above average numbers of human rights treaties have higher economic performance than those who have ratified below the average (p 79). Both of these empirical findings are used to counter the argument from Posner that states' human rights commitments 'crowd out' economic growth and development efforts.⁵

Snyder presents the dilemma that the era of mass movements has passed and today the focus on large international civil advocacy organisations splits discourses, does not fully represent local views, and creates distance between the grass-roots and elites in control of the organisations. By evidencing the limitation of current advocacy strategies, Snyder argues that human rights movements are in need of mass movements if they are to achieve their lofty goals. The mass movements must include legalistic, professionalised advocacy work as well as local cultural and religious elements in a rejection of the current elite steered methods (p 94-5). Citing studies of transitions to democracy, Snyder says that for democratic rights-based governance to take hold mass mobilisation of groups leads to more stable and long-term results than imposing such a transition through elites (p 97). Snyder believes that for rights-based change the best results come from a coalition of reform-based political parties, social

³ See e.g. Brown Weiss, 'International Law in a Kaleidoscopic World' (2011) 1 *Asian Journal of International Law* 21.

⁴ Lupu, 'The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects' (2013) 57 *American Journal of Political Science* 912.

⁵ Posner, *The Twilight of Human Rights Law* (2014).

movements, and elite-steered organisations that complement each other and ideally share a common frame with which to strike a chord with mass audiences (p 109).

Turning to 'backlash', In Chapter 5 Vinjamuri updates the discourse by highlighting how backlash can take liberal as well as illiberal forms such as the legal challenges to President Trump's first travel ban (p 118). While most researchers focus on illiberal backlash, such as act by states that counter human rights norms, Vinjamuri explains how liberal groups can mount backlash against illiberal policies to force the hand of a state to reengage with human rights. The chapter adopts a definition of backlash that takes both forms into account discerning that backlash is a behavioural response to the application or anticipation of policy which is in opposition to the party's interests or values (p 120). Vinjamuri outlines strategies of backlash, addressing a scholarly need to expand the literature on this topic given it is no longer the case that only illiberal regimes are carrying out backlash but that backlash is also taking place *within* and against traditionally liberal Western states. Vinjamuri covers violent and nonviolent entrenchment, forum shopping, strategic legalism, regionalism, and containing backlash. Notably the chapter posits that backlash can be both a potent threat to human rights and also naturally associated with progress (p 134).

Risse addresses what he calls a common blind spot in human rights research: areas of limited statehood. Risse notes it is a common assumption that states can enforce their will effectively to adhere to or violate human rights and those which intentionally violate rights do so because they want to (p 139). Risse suggests that, in fact, most states have areas of limited statehood where their domestic sovereignty is curtailed and they cannot enforce their will, and therefore any human rights obligations (p 141). The chapter explains that the protection of social and economic rights can be easier in areas of limited sovereignty compared to civil and political rights (p 149). This is because public goods and services can be provided by other actors such as corporations, aid agencies or NGOs. With regards to civil and political rights, protection requires institutional capacity and the rule of law, which by nature cannot be provided for in an area of limited sovereignty.

Continuing the theme of backlash from Chapter 5, Cooley and Schaaf look specifically at the phenomenon in Eurasia and the region's normative frameworks that challenge mainstream human rights. Cooley and Schaaf examine the Shanghai Cooperation Organization's Anti-Terror Treaty and the Commonwealth of Independent States' Minsk Convention. It is argued that these two Eurasian treaties give regimes more power to target political opponents who reside abroad allowing for rendition between the state parties, reduces security costs through state security service cooperation, and creates a new normative framework that challenges IHRL. The chapter details how regional frameworks can muddy the waters where regional election observation missions can lend support to authoritarian regimes and conflate and confuse the situation by contrasting the position of bodies such as the OSCE (p 177-8). Cooley and Schaaf include a case study of Ukraine in relation to its competing IHRL and regional framework obligations giving particular attention to the state's extradition practices (p 179-184).

In Chapter 8, Hurd argues that where human rights seek to reduce contention between religions in fact religious rights entrench differences that cause social friction (p 195). For instance, the identification of the Rohingya in Myanmar as a religious group indicates that religion is the key factor leading to their discrimination but in actuality there are political, economic, racial, and statist reasons for the oppression (p 199). By highlighting the right to religious freedom and a group's identification as a religious group, activists are recognising the very differences which have caused the deep divides and inequality rather than focusing on a peoples' status as human beings or citizens (p 200). Hurd explains that religious rights afford political benefits to representatives of faiths, but faiths may not be equally represented or groups may be in a grey area between religious and secular (p 210).

Merry and Levitt explore the vernacularisation of women's rights in Baroda, Beijing, Lima, and New York City. The authors looked at the practices of two women's NGOs in each city examining differences in the issues the NGOs advanced, the communication technologies used, and the modes of organisation and work (p 219). Merry and Levitt discovered that some NGOs carry out human rights-based work without direct references to rights language while others use rights language to advance issues that remain controversial in the respective areas (p 233). The chapter demonstrates that NGOs whom receive funding from international sources engage in more controversial women's rights issues and overtly use rights-based language whereas more locally supported NGOs use human rights as a backdrop but focus expressly on issues such as domestic violence and education. Merry and Levitt note that the work of internationally funded NGOs is more in keeping with original human rights frameworks whereas locally supported NGOs must sift and select women's rights issues that can be translated into more familiar concerns (p 234). The vernacularisation of human rights is said to be inevitable when ideas are spread across a global sphere and the authors underscore the risks associated with vernacularisation that departs from internationally agreed understandings (p 235).

Following on from the previous chapter, Hertel examines how human rights advocacy has mainstream forms grounded in traditional interpretations in the West and alternative advocacy movements which adopt goals that are not contradictory to human rights but not part of the mainstream interpretations. Hertel argues that by recognising the interaction between mainstream and alternative forms of human rights advocacy the potential future trends in human rights can be revealed. The chapter details the anti-child labour campaign in the 1990s which was at odds with the wishes of those in Bangladesh leading to Bangladeshi activists grounding their response in the harm posed to the children's non-derogable rights regardless of the infringement of economic rights (p 246). The chapter sets forth the idea that the alternative advocacy campaigns do not undermine the universally agreed principles of human rights but instead are creative attempts, distinct from vernacularisation and localisation, at ensuring compliance that mainstream advocacy can learn from.

In Chapter 11, Moyn discusses how the current human rights movement departed from pre-Cold War liberalism and embarks upon a critique of political science as a whole for its split between constructivists and realists, and reliance on quantitative research. Moyn illustrates how liberals altered their traditional position to place individual political and civil freedoms at the forefront of international affairs in the aftermath of totalitarian regimes and failure of imperialism (p 274-5). The chapter argues that contemporary political scientists, such as Simmons and Sikkink, are products of this change in liberalism resulting in 'underpromising'. This underpromising, Moyn asserts, stems from the failure of social welfare to take hold in the post-imperial political sphere and the need to find 'something that works' (p 281). In Moyn's view, liberals today do not recognise the reality that the advancement of human rights is a more modest foreign policy than that upon which liberalism was founded. To rectify this deficiency, Moyn believes political scientists would do well to engage with theory to serve as a reminder of the high aspirations of liberalism.

In Chapter 12, Hopgood outlines that the classic conception of rights, individualistic rights where in moral terms society comes second, has historically been the conception of choice in the West. The chapter explores what effect a shift in global power to the East may have for this classic conception of human rights. Hopgood argues the middle class have less need for human rights and can access opportunities through their status. When a right is absent the middle-class will only seek to attain it if it increases their own power in society. Particularly Russia and China have challenged the classic conception and contested the current understanding of rights (p 297). Hopgood frames Russian and Chinese actions not as backlash but instead as a potential end time where the end of Western hegemony signals the end of

human rights interpretation as we know it and seemingly illiberal interpretations are given validity. The chapter advances the view that social ambivalence has been a facilitator where the middle-class has little interest in rights beyond the civil and political, particularly when it comes to redistribution of wealth leading to economic and social change (p 303-4).

In their Conclusion, the editors label the overarching theme of the collection ‘too-thin liberalism’ (p 313). That is to say, further attention is needed on political, social, and economic structures surrounding rights to explain their effectiveness, or lack thereof. The editors elaborate on four models for the future of human rights. The first, staying the course, hypothesises that those who envisage all societies will, in the end, be liberal will persevere with the current human rights path but may have to lower their expectations in the short term (p 320). The second, a pragmatic partnership, sees activists tiring of universalism failing to understand the needs of local people they interact with and listen to local demands in exchange for some aspirations of universal human rights being relinquished (p 321). The third, global welfarism, posits that a return to a welfare state would utilise collective political action and decrease the use of individualistic rights-based language (p 322). Lastly, the *Sideshow* model explains that human rights could enter a severe decline because of backlash taking hold, economic and social inequality leading to Western politicians failing to garner support for rights, and rising power of the East and developing states leading to a rejection of Western liberal rights language (p 323-4).

This collection has tackled a multitude of human rights threats and attempted to disprove or elaborate on claims regarding human rights inadequacy and fallibility. Scholars at the intersection of law and human security have made similar but less fatalistic claims concerning the effectiveness of human rights making the argument that state-based human rights practice needs to be reshaped to embody an individualistic human security approach for greater positive outcomes.⁶ Nevertheless, this collection has presented evidence that rights-based approaches *do* result in tangible positive outcomes. The contributors have shown that while human rights are under unprecedented pressure and may not have yet reached the lofty ideals of traditional liberalism there is a visible influence of rights-based approaches on states’ behaviour and the human condition.

An important aspect of this collection for human rights law scholars is the background it provides on backlash and end times. Applying the theoretical aspects of this collection to the functioning of legal systems could produce interesting and topical work. Examples could include reviewing judicial activism in response to backlash and assessing the possible futures of institutions such as treaty monitoring bodies, regional courts, and national human rights institutions. This collection has brought to the forefront the importance of ongoing and future research on whether one model interpretation of IHRL will emerge amid shifting tides in geopolitics and the global hegemony.

The rigorous contributions to this comprehensive collection serve as a thought-provoking trigger for future research in IHRL. An interesting question that can be drawn from this collection is whether the universal international system in which human rights resides is tenable? In other words, will new developments mentioned in this book such as the promotion of social and economic rights in the global South and the simultaneously increasing localisation of groups and growing global networks of activists result in change to the international actors who, today, draft and ratify IHRL treaties? Consequently, will a change to the Westphalian system in which human rights are embedded lead to positive or negative outcomes for human rights and perhaps more importantly, human welfare?

⁶ von Tigerstrom, *Human Security and International Law: Prospects and Problems* (2007) at 89; Estrada-Tanck, *Human Security and Human Rights under International Law: The Protections Offered to Persons Confronting Structural Vulnerability* (2016).

Alexander Gilder

PhD Researcher & Graduate Teaching Fellow

The City Law School

City, University of London