The Illegitimacy of Human Rights –

Universalism through Particularity

MSc in Political Theory Dissertation

Abstract:

Since the creation of the Universal Declaration of Human Rights (UDHR) in 1948, human rights have increasingly come under attack. Criticisms include concerns about enforceability, cultural relativism, ethnocentrism, hypocrisy, and neo-colonial practices, raised by states, NGOs, and scholars alike. Additionally, recent years have seen numerous human rights violations and growing scepticism towards human rights institutions. In this paper I argue that the underlying issue with international human rights is a lack of legitimacy, undermining their ability to serve as a universal framework. While literature on the legitimacy of global governance institutions has grown, the specific issue of human rights legitimacy has been largely overlooked. Though some scholars have addressed this from an international law perspective, there has been no comprehensive exploration challenging the legitimacy of international human rights. Drawing on literature on legitimacy in global governance, I present a framework to assess the legitimacy of international human rights. This framework is based on my concept of Bottom-up Universalism, which includes content universalism and universal inclusion. My legitimacy framework comprises six criteria grounded in sociological, substantive, and procedural dimensions: (1) Explicit State Consent, (2) Implicit People's Consent, (3) Content Universalism, (4) Epistemic Adaptation, (5) Universal Representation, and (6) Accountability. These criteria demonstrate that existing criticisms contribute to a lack of legitimacy in human rights, failing to meet the standard of universality. Specifically, they fall short of free Explicit State Consent due to power imbalances between states and the oppressive global order. Additionally, human rights fail in Universal Representation, given the absence of many states from the human rights creation process and the lingering effects of colonialism. Lastly, human rights lack Content Universalism due to a Western-centric bias towards liberal values. These shortcomings collectively undermine the overall legitimacy of human rights, rendering them particular rather than universal.

"Der Mensch wird am Du zum Ich." – Martin Buber

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1. Introduction

In recent years, human rights[1] (HR) have faced mounting criticism from various sides. Governments and other political actors increasingly express scepticism towards the very institutions they have created and ratified (Schaffer, Follesdal & Ulfstein, 2014: 2-3). Simultaneously, it appears that HR violations are proliferating rather than diminishing: the ongoing occupation of Palestinian territories by Israel and the use of terror and torture against civilians on both sides (Human Rights Council, 2024); the collapse of women's rights in Afghanistan under Taliban rule (Human Rights Watch, 2022); the imminent threat of ethnic cleansing of the Masalit minority in Sudan (Amnesty International, 2023); and the continued oppression of indigenous groups in Canada (MMIWG, 2019). These examples are stark reminders of the failures in protecting HR globally. Moreover, even within academic circles, HR are subject to a wide range of critique, from accusations of neo-colonial practices and cultural relativism to concerns about practical inefficacies and the lack of enforceability (Samson, 2020; Yasuaki, 2000). Thus, a pressing question arises: why are HR not effectively upheld and protected, and what are the underlying issues preventing their realisation?

In this paper, I argue that the primary challenge facing HR today is a lack of legitimacy. While the existing criticisms of HR institutions are valid, I contend that legitimacy lies at the heart of these weaknesses and has too often been overlooked. I intend to close

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[1] When referring to 'human rights', I am speaking of the body of international norms, human rights treaties, and associated institutions 'that protect[] fundamental and general human interests […] against intervention or non-intervention of (regional, national, or international) political institutions" (Besson, 2014: 48; Schaffer, Follesdal, & Ulfstein, 2014: 15). The treaties encompass, among others, the Universal Declaration of Human Rights (UDHR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention against Torture (CAT) (Donnelly, 2013: 55). Some of the most relevant institutions are the United Nations Human Rights Council (UNHRC), the Human Rights Committee (ICCPR), and the International Court of Justice (ICJ).

this gap by showing that while these issues stem from normative problems, the real challenge is of pragmatic nature: illegitimacy leads to a lack of enforcement, diminishes respect and recognition of their validity, and fosters distrust in the institutions responsible for upholding HR. For HR to be truly universal and fulfil their intended purpose, I propose they must be based in a two-dimensional account of what I term Bottom-up Universalism, which consists of a set of values that are both universally accepted and universally inclusive in their creation. Therefore, I advocate for account account of legitimacy, based on six criteria: (1) Explicit State Consent, (2) Implicit People's Consent, (3) Content Universalism, (4) Epistemic Adaptation, (5) Universal Representation, and (6) Accountability. With these standards I argue that HR will not only achieve true universality but also possess genuine legitimacy. However, I contend that HR in their current condition fail to meet these standards.

To substantiate this argument, I will (2) outline the prevalent debates on HR. I will (2.1) examine metaethical universalism (Benhabib, 2002), universalism of shared values (Nickel, 2007), and universalism of global consensus (Donnelly, 2013). I will then (2.2) contrast these interpretations with relativist arguments, emphasising moral and cultural relativism (Pollis & Schwab, 1979). Additionally, I will (2.3) address criticisms of ethnocentrism and neo-colonial practices through HR (Samson, 2020). Finally, I will (2.4) position myself within the discourse, by introducing my account of Bottom-up Universalism for the ongoing discussion on HR.

In the next section, I will (3) explore the issue of legitimacy in depth. I will begin by (3.1) distinguishing between the prominent conceptions of legitimacy within the debate on international institutions, highlighting how this debate differs from discussions of legitimacy at the state level. I will examine four major dimensions of legitimacy: sociological (Weber, 1964), normative (Buchanan, 2003), substantive (Buchanan & Keohane,

2006), and procedural (Raz, 2006). Building on this analysis, I will (3.2) demonstrate how human rights represent a unique case, even within the broader framework of international institutions. Finally, I will (3.3) present my own account of legitimacy, specifically tailored to the context of human rights.

In the final section, I will (4) demonstrate how the aforementioned criticisms of human rights contribute to a lack of legitimacy in the current framework. Specifically, I will argue that human rights (4.1) fail to meet the standard of Universal Representation due to power imbalances and the lingering effects of colonialism. They also (4.2) fall short of the standard of Content Universalism because of a bias toward Western Liberalism. Lastly, they (4.3) fail to achieve Explicit State Consent due to oppressive structures within the international community. Together, these shortcomings significantly undermine the overall legitimacy of human rights.

2. Current Debates on Human Rights

Even before the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in 1948, the American Anthropological Association (1947) had already voiced concerns regarding the narrow focus on individual rights and the potential neglect of cultural diversity, as evidenced by their 1947 Statement on Human Rights. This marked the commencement of a lingering discussion, enriched by a substantial body of literature. While numerous sub-debates exist in the context of HR case studies, the theoretical discourse bifurcates into two major strands: the contention between universalism and relativism, and the critique of structural injustices, notably colonialism. In the following, I will delineate the main aspects and scholars associated with these debates. Subsequently, I will offer concluding remarks encapsulating my stance on these discussions.

2.1. Universalism

At the heart of the debate on HR, and the UDHR in particular, lies the term 'universal' and the idea of rights shared by all humans. Neither the concept of universalism nor the idea of HR is a product of modernity; both have roots in ancient philosophical discourse. Importantly, these debates are not exclusive to Western[2] societies but have also flourished in other cultures, including China and precolonial African societies (Ibhawoh, 2004). Today there exists a variety of interpretations and meanings for Universalism, some of which share little in common apart from the term itself. I will provide an overview of some prominent interpretations of the term universal and the resulting arguments.

The first interpretation pertains to universalism as objective moral truth or universal human essence (Qi, 2011: 886). This argument primarily addresses the metaethical justification of HR. It posits that HR are universal because of a shared human essence that entitles every individual to fundamental rights. This rationale is used to ground HR in a common good, thus legitimizing them. This approach is more concerned with the fundamental entitlement of all human beings for the rights than with their content or substance (Lenzerini, 2014: 31-32). Scholars frequently cite 'dignity' as intrinsic to human beings, identifying it as 'the source producing human rights themselves in their concrete characterization' (idem: 18). This line of argument is often brought forward by liberal thinkers that appeal to the rationality and reason of European enlightenment methods (Benhabib, 2002: 37; Donnelly, 2013: 65). This strand of thinking is at the heart of the anti-colonial critique of HR that I will discuss in section 2.3.

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[2] By 'Western', I primarily refer to European liberal democracies and the United States, as they played significant roles during the colonial era and their cultures are deeply rooted in Enlightenment principles and the ethos of capitalism.

The second interpretation of universalism revolves around the concept of shared values across all cultures. Advocates of this view maintain that HR encompass a set of values prevalent in almost every civilisation based on common human struggle. Moreover, the abstract language of HR permits diverse cultural interpretations (Nickel, 2007: 173-175). For instance, Jack Donnelly (2013: 56) contends that the world's various cultures would agree on most human rights to be fundamental. I will explore this argument further in the cultural relativism debate (2.3) and my discussion on HR's illegitimacy (4).

The third interpretation of universalism pertains to the notion of global consensus. Consensus universalism focuses less on the specific content of HR and more on their acceptance by people worldwide. Fernando Tesón (1985: 873) asserts that 'if there is a possibility of meaningful moral discourse about rights, then it is universal in nature and applies to all human beings despite cultural differences.' This argument emphasises a democratic dynamic, suggesting that HR derive their universality from their acceptance by the global community. In this context, Jack Donnelly references John Rawls' concept of 'overlapping consensus', which denotes a partial political consensus (Donnelly, 2013: 57-58; Rawls, 1996: 133-172, 385-396). Albeit debatable whether a partial agreement (of a majority instead of a whole) can be called universal, the concepts of acceptance and consensus will be particularly relevant in the subsequent discussion.

2.2. Relativism

Having laid out common interpretations of universalism in relation to HR, I will now turn to the most prominent criticisms of HR and universalism. Hereby, I will focus particularly on the relativist line of argument, as it is often presented as the primary counterpoint to universalism.

Metaethical Relativism

The first criticism is often called 'metaethical' or 'moral relativism' and refers to moral universalism (Tesón, 1985: 887). The central claim is that there is no objective moral truth. The milder version asserts there are 'no transboundary legal or moral standards […] against which human rights practices may be judged acceptable or unacceptable' (idem: 871). Michel Wieviorka (2013: 1948-1949) notes that moral relativism was particularly popular during the 1960s and 1970s. The prevailing view was that morality is a social construct, 'shaped by cognitive attitudes and the result of historical processes. They cannot therefore be explained objectively as the triumph of reason' (ibid.).

Opponents of metaethical and moral relativism argue that this perspective is incoherent: in asserting the absence of universal moral truths, relativists paradoxically uphold the universal moral principle that one ought to act according to the norms of one's own culture (Tesón, 1985: 888). Other critics claim that moral relativists create a profound dilemma by adhering to tolerance as a moral principle, as they will inevitably encounter cultures that are intolerant (Nickel, 2007: 171). Furthermore, radical moral relativists risk legitimising or relativising severe crimes such as genocide or torture if they assert there is no objective moral truth (Reichert, 2006: 30).

Cultural Relativism

The second relativist argument is known as 'cultural relativism'. Though related to moral relativism, its claim is that 'local cultural traditions […] properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society' (Tesón, 1985: 870). Similarly, Lenzerini (2014: 8) asserts that the mild version of cultural relativism acknowledges cultural differences while accepting certain core values as universally applicable. Cultural relativists argue that HR fail to accommodate cultural

diversity, rendering it inadequate (Pollis & Schwab, 1979: 1 ff). On a different account, Fernand de Varennes (2006: 81) contends that 'while the actual international standard itself does not change, its application can bring in different results in states with completely different situations'. In other words, cultural relativism does not deny the universality of human rights but suggests that cultural contexts can influence their application and outcome despite their universal validity (idem: 79).

Defenders of universalism object that cultures are neither isolated and homogeneous, nor static. Instead, they are constantly evolving and intersecting through external influences (Nickel, 2007: 169; Yasuaki, 2000: 72). Thus, some scholars highlight similarities between cultures and their moral values. Amartya Sen (1999: 33-35) for instance, points to parallels between Western values and the thoughts of Confucius and Ashoka, showing that HR concepts have existed in various cultures. Cultural relativists, however, do not deny these similarities. As Saba Mahmood (2009: 860) puts it, the distinction lies not in the values and ideas themselves, but in 'the thick texture and traditions of ethical and intersubjective norms that provide the substrate.' Hence, while some values may appear similar on the surface, they can differ in their systems of representation and the ways they are embedded in their respective 'maps of meaning'.[3]

Western-Centrism

Resulting from the preceding relativist arguments, the primary criticism of HR is its perceived ethnocentrism or Western-centric bias. Chantal Mouffe (2013: 31-32) argues that HR are based on distinctively Western preconditions. Onuma Yasuaki (2000: 87), for example, identifies two main aspects that render HR Western: '(1) the notion of rights of independent individuals suspicious of state authority and (2) the adversarial

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[3] Stuart Hall (2013: 14) defines 'maps of meaning' as the complex systems of representations that are specific to different cultures and languages.

and legalistic system for settling social disputes, controlling state mechanisms, and realising interests and values of humanity.'

These critics argue that ethnocentrism undermines the validity of HR as a universal standard (Murphy, 1980: 436). In the Islamic world, for instance, the focus on the individual clashes with local social norms (idem: 437). Similarly, Obinna Okere (1984: 148) contends that, in contrast to Western individualism, the 'African conception of man is not that of an isolated and abstract individual, but an integral member of a group animated by a spirit of solidarity.' Yasuaki (2000: 59) also emphasises that many Asian cultures are rather alien to Western legalism, as violations of cultural norms are traditionally not resolved through legal means. Thus, HR contradict some fundamental worldviews and fail to adequately address specific social and cultural issues, rendering them subaltern[4] and undermining their own universality.

Opponents of the ethnocentric critique, such as de Varennes (2006: 71-72) argue that '[o]f the 58 countries participating in [HR's] genesis, 20 were from Latin America, 4 African and 14 Asian. Non-European countries were therefore very much a part of this process.' Similarly, Chien-yuan Tseng (2017: 992-993) and Sumner Twiss (2011) highlight Chinese values in the UDHR, such as the Confucian concept of benevolence in Article 1. Finally, in response to the claim that HR are excessively individualistic, Allen Buchanan (2008: 49) argues that attributing rights to individuals does not necessarily make them individualistic, as they often serve to protect the life of the community. I will return to these arguments in the subsequent sections and show why they are insufficient to refute the ethnocentric critique.

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[4] The term 'subaltern' is used as defined by Dipesh Chakrabarty (2000: 101, 109): life-worlds are 'subordinated by the 'major narratives of the dominant institutions', due to the inability of the relegated culture to penetrate the dominant cultural language and the major institution.

2.3. Structural Oppression and Colonialism

Another significant strand of criticism arises from Critical Theory and Postcolonial studies. Critics see HR as deeply rooted in structural oppression via colonialism, imperialism, and capitalism. However, while acknowledging the common struggle, Aimé Césaire ([1956] 2010) warns against equating Capitalism and Colonialism. In his letter to Maurice Thorez, he notes that the colonial struggle is of 'completely different nature than the fight of the French worker against French capitalism, and it cannot in any way be considered a part, a fragment, of that struggle' (idem: 147). In the following, I will therefore primarily concentrate on the colonial argument instead of the anti-capitalist critique. While sharing some similarities with ethnocentric criticism, it extends beyond a mere institutional critique of HR.

At the heart of the anti-colonial critique of HR lies the issue of cultural and epistemological domination. As Wieviorka (2013: 1946) notes, 'the end of colonialism and of empires […] is also a period when western thinking could consider itself to be synonymous, at least in part, with universal values.' According to Yasuaki (2000: 55), this is partly why many cultures feel resentment and alienation towards HR. They are often perceived as Western triumphalism since they are universal only because the West imposed its values on large parts of the world (Sharma, 2006: 117).

Several authors highlight the deep-rooted racism and imperialist thought within the Liberal tradition. Samson (2020: 13) underscores Kant's gradation of personhood, predicated on white superiority. Similarly, James Tully (1995: 65, 71, 80) argues that the notion of historical progress and the hierarchical mapping of the world in John Locke's writings justify colonialism. Furthermore, Iqtidar (2021: 458) contends that asserting epistemological ownership over concepts such as tolerance, equality, and

freedom exemplifies a liberal imperialist mindset. In this context, claims for a liberal framework of HR and global society by Western scholars like Benhabib (2002) and Donnelly (2013) may appear to display neocolonial undertones. In light of the West's colonial history and the intertwined imperialism and racism within Liberal thought, it is questionable whether Western values are best suited to serve as a framework for universal HR.

As previously noted, the creation of the UDHR involved 58 states from various cultures. However, given the continent's size and cultural diversity, Asia and Africa were significantly underrepresented (Baxi, 2006: 228). As Mary Ann Glendon (2001: 223-225) notes, 'much of the world's population was not represented in the UN in 1948: large parts of Africa and some Asian countries remained under colonial rule.' Out of the nine members of the original drafting committee, five were from Western countries, non from Africa, and only one woman was included. Scholars like Benton and Slater (2015: 140-162) point out that at the time the world was still a world of empires, dominated by Western Liberalism, with decolonisation in its infancy. More radical critics as Frantz Fanon ([1961] 2001: 48) even assert that HR principles were devised by the West to prevent and appease uprisings in the colonies. Others criticise that Western powers embraced HR only after experiencing imperialism's cruelties themselves during the Second World War, whereas centuries of colonial atrocities were insufficient to provoke such a realisation (Césaire, [1950] 2000: 36).

There is little debate about the colonial argument due to its persuasiveness and the strong moral imperative of anti-colonialism. Only a few voices criticise the radical 'conspiracy theory' that claims 'that human rights are a Macchiavelian [sic!] creation of the West calculated to impair the economic development of the Third World' (Tesón, 1985: 896). Others argue that the anti-colonial perspective often implies HR are malevolent,

ignoring the numerous benefits and improvements since the creation of the UDHR (Nickel, 2007: 170). Moreover, today's HR arguably oppose imperialism and promote the self-determination of peoples and nations (ibid.).

Notably, many proponents of HR omit colonialism or treat it as a closed chapter (Samson, 2020: 35). However, at the time of HR's creation, colonialism had deeply influenced the minds of the colonised (Ashis Nandy: 1983, XI). Kishore Mahbubani (2009: 27) notes that Asia's greatest suffering was from mental rather than physical colonisation. Nsongurua Udombana (2023: 288) describes colonialism as the colonised's inability to resist the colonisers' ideological domination. Fanon highlights how the emerging intelligentsia of many African states adopted Western ideology under the influence of the colonist bourgeoisie (Fanon, [1961] 2001: 34-35). Consequently, critics argue that the UDHR's creation process is permeated by colonial structures, thus making the term 'universal' highly debatable.

2.4. Taking a Position – Bottom-up Universalism

Finally, I will offer some concluding remarks on these debates and introduce my own position. Since determining the correctness of these criticisms is not essential to my argument, it is sufficient to acknowledge their existence and the justified doubt they cast on the adequacy of HR. I will clarify my stance on these issues to illuminate why I argue that HR lack legitimacy.

Regarding the metaethical debate, I do not personally believe in an objective moral truth. However, even if such a truth existed, significant differences between the moral worldviews of different cultures remain. Moreover, we lack a universally accepted method to determine which moral values are objectively true. Thus, even if one culture possessed the actual moral truth, it would be unlikely for other cultures to acknowledge

this and change their moral codes accordingly in the foreseeable future. Therefore, while the question of objective moral truth is philosophically intriguing, from a pragmatic point of view it is of limited utility in analysing or addressing current HR issues.

Given this, I believe it is prudent to adopt a culturally relativist stance for now, considering all cultures and their moral codes as equally valid. In this view, cultures and their moral worldviews are organically developed and shaped by their histories and natural circumstances. However, this does not imply that we must accept all values simply because they are part of a culture. As Allen Buchanan (2008: 43, 64) has pointed out, some people base their values on factually incorrect beliefs. Furthermore, it might be the culture itself that is guilty of parochialism and not HR (idem: 43-44). Most importantly, we are not obliged to accept moral beliefs that deem other cultures inferior, as moderate cultural relativism presupposes a minimal standard of equality and tolerance towards other cultures.

In light of my relativist claims, the question arises whether there can even be such thing as universal values. On my interpretation of the term, there is still a possibility of universal HR, if it emerges from global dialogue and consensus rather than from abstract philosophical debates. As Yasuaki (2000: 71) argues, it is impossible to 'reach a consensus over the universality or relativity of human rights on a purely logical dimension.' Therefore, I hold, following Karl Marx, that universalism must be interpreted in the context of people's social reality (Wieviorka, 2013: 1945; Marx & Engels, [1846] 1965). Universalism must arise bottom-up, from the public sphere, social conflict, and confrontation, rather than from an abstract philosophical mastermind (idem: 1947).

This requires a deliberative process, in which all cultures participate on par and contribute their cultural specificities. In a way, globalisation, with its processes of

modernisation, migration, and trade, contributes to that, as it blurs national cultural borders, and creates increasingly diverse societies. This results in what Hans-Georg Gadamer ([1960] 2004: 305, 398) describes as a 'fusion of horizons', which can enhance cultural understanding but also generate significant tensions due to its often forced nature. A universal HR standard is thus crucial, as it can help mitigate conflicts and accommodate cultural differences. A culturally sensitive universalism, in accordance with de Varennes (2006: 81), suggests that the meaning of HR is universal, but the outcomes may vary depending on cultural backgrounds and circumstances.

Although I acknowledge the positive impact of HR and reject that they are a Western conspiracy to oppress former colonies, I argue that in their current state, HR fail to reach the intended standard. On the one hand, it is evident that HR emerged from a historical context of severe inequality and structural oppression, marked by Western colonialism and the lingering effects of World War II (Samson, 2020: 12). On the other hand, only a quarter of today's United Nations members participated in the creation process; of those who participated, many were not in a position to negotiate on par with the hegemonic Western powers. This has resulted in a version of HR that fails to be universal, as it is partly ethnocentric and does not accommodate all the world's cultural particularities.

Does that make HR obsolete? Certainly not. HR is the best we have, but not the best we can have. What we need is a version of HR that accommodates complex spaces and times. We need a framework that acknowledges the existence of not one, but multiple modernities[5] (Asad, 2003: 179; Tong, 2004: 300). To show how this is possible,

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[5] Drawing on Shmuel Eisenstadt, Wieviorka (2013: 1953-1954) advocates for a redefined understanding of modernity that does not privilege the West as the universal standard. He posits that current global changes, marked by immense diversity, result in distinct conceptions of modernity.

it is crucial to consider the requirement of 'legitimacy', which is vastly underrepresented in the current debate yet deserves more attention. Legitimacy is an indispensable pre-requisite for what I call Bottom-up Universalism and a functioning institution of HR. As I will show, legitimacy is the common ground that connects all other criticisms. It is at the core of why HR are ineffective and inadequate. Therefore, if we aim to establish truly bottom-up universal HR – that are both universally inclusive in their creation pro-cess and universal in their moral content – they must be legitimate. This legitimacy, in turn, reinforces their universality.

3. Legitimacy – An Overlooked Dimension

At its core, legitimacy refers to 'the right to rule' or 'justified authority', either in a nor-mative or a sociological sense (Buchanan & Keohane, 2006: 405; Besson, 2014: 33). The normative conception addresses whether an institution or government is morally justified in ruling, while the sociological interpretation focuses on whether people be-lieve that someone should have the right to rule (Schaffer, Follesdal, & Ulfstein, 2014: 13). Conversely, attempting to rule without legitimacy would constitute an unjustified exercise of power (Buchanan & Keohane, 2006: 408-414). Furthermore, a state lacking legitimacy would likely face significant challenges in maintaining power over its people (Lipset, 1959: 91). As Wojciech Sadurski (2015: 404) summarises, legitimacy appears to be situated between legal validity and justice, and in line with Max Weber (1964: 382), I would add the concept of 'Legitimitätsglaube' (the sociological belief in legiti-macy).

Although there is a long-standing history of research and debates on the issue of legit-imacy, most of it has focused on states or domestic social orders. Little attention has been given to legitimacy in the international order, and even less to the case of HR

(Besson, 2014: 33). One of the most relevant authors on this topic is Joseph Raz (2006; 1986), who has developed the 'service conception of legitimacy'. In recent years, Allen Buchanan (2003; 2008) has explored the legitimacy of HR specifically. However, most of the literature purely focuses on the legal or moral dimensions of HR legitimacy, with little consideration of the overall legitimacy of HR (Follesdal, 2013; Simmons, 2009). Additionally, there has been no serious attempt to connect legitimacy issues with the other criticisms I discussed earlier. Finally, none of the prominent works on the legitimacy of HR have seriously questioned their legitimacy; they have merely defended it or remained within a theoretical framework.

In the following sections, I will attempt to address these gaps. I will begin by (3.1) providing an overview of common conceptions and criteria of legitimacy within the debates on international institutions, contrasting them to state legitimacy. Then, I will (3.2) examine HR as a special case within the framework of international institutions. From this analysis, I will (3.3) propose my own set of criteria for the legitimacy of HR, encompassing a complex mix of substantive, procedural, and sociological aspects.

3.1. Legitimacy and Internationalism

Charles Beitz (1979: 408) suggests that the international society can be viewed as analogous to a domestic society, with states acting as individuals within a state. In this regard, states are 'subjects of international morality, and the rules that regulate their behavior are supposed to preserve a peaceful order of sovereign states' (ibid.). The international system comprises states, intergovernmental and nongovernmental institutions, and international law and norms. Unlike states, however, the international system and its governance institutions do not claim a monopoly on violence in the Weberian sense, and only have a limited range and means of coercion (Schaffer, 2014:

214). Consequently, the issue of legitimacy becomes even more critical, as the functioning of the international system relies primarily on the voluntary compliance of people and states (Buchanan & Keohane, 2006: 406).

Meanwhile, Nicole Hassoun (2012: 51-52) argues that coercion requires legitimacy to justify the use of force. In this regard, international institutions rely more heavily on legitimacy to exercise coercion because sovereign states can more easily evade the influence of these institutions. According to Schaffer (2014: 212), the 'puzzle of legitimacy […] lies in offering citizens [and states] valid reasons to obey, support or refrain from interfering with global governance institutions.' To create this legitimacy, four main strands of arguments stand out in the literature: the sociological notion of legitimacy, relying on consent; the normative conception, referring to justice; the substantive legitimacy, concerned with outcome and content; and procedural legitimacy, referring to processes and structures. Albeit being separate theoretical perspectives, all of them are closely interrelated in practice.

Sociological Legitimacy

As mentioned above, the sociological conception of legitimacy is notably influenced by Max Weber, who views legitimacy through consent as the belief in a social order that promotes stability and social regularities (Weber, 1964: 124). According to this perspective, 'a state is legitimate when it is accepted as such' (Valentini, 2012: 596). Lipset (1959: 86-87) emphasises that consent is closely tied to people's or states' interests and values; a system is only regarded as legitimate if it aligns with the belief systems of its subjects. This highlights the connection between the sociological and normative dimensions, as consent is based on the moral belief that the system is justified in its

rule (Hessler, 2014: 119). A crucial condition for the sociological conception is that consent must be genuine and free of coercion (Buchanan, 2003: 187-188).

Although the criterion of consent has been widely endorsed, particularly among legal scholars, it has come under scrutiny (idem: 179). Joseph Raz (1986: 89), for example, argues that consent is useful for stabilising a system but not legitimacy generating. Consent, according to him, is thus neither a sufficient nor a necessary condition for Legitimacy (see also Besson, 2014: 38). Another frequent criticism is that non-democratic states are themselves not legitimate and therefore cannot generate legitimacy through consent. This is, because they are not justified in representing their people and often violate HR (Hassoun, 2012: 55). Moreover, even if these states were legitimate, they might undermine their own legitimacy by transferring sovereignty and coercive power over their own people to an international institution (ibid.). This raises several important questions: Should consent to international institutions come from states or from the individual subjects within the state? Is democracy a necessary condition for legitimacy? And finally, does consent, whether by states or individuals, need to be explicit or implicit? These are significant criticisms and crucial issues for the legitimacy of HR, which I will address later.

Normative Legitimacy

In contrast to the sociological perspective, many scholars see the mere belief in an institution's moral adequacy as insufficient to establish legitimacy; they content that the institution must also be just or at least committed to justice. As Buchanan (2003: 181) puts it, '[w]hat morally justifies efforts to wield political power through the institutions of international law is […] not consent, but rather a credible commitment to achieving justice, understood primarily as the protection of basic human rights, and doing so in

ways that do not violate those same rights.' These conceptions are often tied to the belief that legitimacy inherently generates moral obligations to obey the corresponding institution (Raz, 2006: 1006-1007). A notable objection to such justice-based accounts of legitimacy is the potential for deep moral disagreement on the nature of justice, especially in the context of international institutions operating within a multicultural environment.

Substantive Legitimacy

Substantive accounts of legitimacy are grounded in the quality of an institution's output or content. While this output can be justified by moral reasoning, it may also rest on rational considerations. One instrumental criterion, as articulated by Buchanan and Keohane (2006: 422), is the concept of 'comparative benefit'. It deems an institution legitimate when its stated objectives align with the interests of its subjects. In addition, if these objectives cannot be effectively achieved through alternative means and the institution is best equipped to realize them, legitimacy is conferred (ibid.). The question arises, however, whether the term 'legitimacy' remains appropriate when it is merely linked to interests. Often, subjects are required to obey an institution even when its directives do not align with their interests, and it is precisely in such cases that the concept of legitimacy becomes truly relevant (Buchanan & Keohane, 2006: 409-410).

Procedural Legitimacy

In response to this critique of the substantive conception, the procedural approach to legitimacy offers a compelling alternative. As Kristen Hessler (2014: 120) argues, legitimacy pertains to the structures or procedures of political institutions, rather than solely the content of their commands. In other words, an institution is considered legitimate if it possesses the right to rule, even when its directives do not align with the self-

interests of its subjects (Buchanan & Keohane, 2006: 409-410). Raz's 'service concep-tion' exemplifies this perspective, asserting that a legitimate institution must be author-itative regardless of the content of its directives (Raz, 2006: 1012-1020). Reasons for content-independent compliance may include epistemic expertise, executive capacity, or coordinative ability (Raz, 1986: 75 ff.; Besson, 2014: 44). However, as Besson notes, this content-independent authority is justified only when the basic normative and de-pendence conditions are adequately met (ibid.).

In summary, international institutions rely more heavily on legitimacy than states and they lack a monopoly on violence, as their subjects are sovereign entities, thus limiting their means of coercion. Common approaches to create legitimacy for international institutions include sociological, normative, substantive, and procedural strands. While these frameworks are interconnected, they differ in focus and occasionally contradict one another. The sociological account emphasises consent as the source of legitimacy, whereas the normative approach argues that perceived legitimacy is insufficient – in-stitutions must also meet certain standards of justice to be considered legitimate. The substantive account integrates both normative and rational considerations concerning an institution's content and output, while the procedural approach focuses on content-independent aspects of legitimacy.

3.2. Human Rights – A Special Case

So far, I have provided only a broad definition of what I consider to be HR. However, to understand why they occupy a unique position within the global governance frame-work, it is necessary to delve into their specific characteristics. According to Besson (2014: 49, 75), HR are 'moral rights of a special intensity' that take a legal form and should apply universally to every human being by virtue of their mere existence.

Additionally, HR are recognised not only by external authorities but also mutually by all members of the relevant community (Cohen, 2004: 197-198). Unlike other international institutions, where the primary subjects are states and companies, the main subjects of HR are individuals. Furthermore, many international institutions appear to derive their legitimacy from HR, using them as a moral foundation to justify their right to exist (Buchanan, 2008: 40; Besson, 2014: 35). This further emphasises the fundamental meaning of HR in the international system.

Interestingly, however, while individuals are the primary rights-holders, public institutions and states remain the principal duty-bearers (Besson, 2014: 51). As a result, HR are mainly concerned with regulating the relationship between the state and its citizens rather than inter-state relations. This shift in focus alters the traditional understanding of legitimacy, making HR institutions distinct even within the international framework (Schaffer, 2014: 227-231). As Besson (2014: 75) articulates, this legal relationship between international and domestic spheres involves 'international second-order duties to adopt and abide by first-order human rights duties in domestic law.' This complexity makes HR particularly challenging, as they must be accessible and understandable to the individuals who are expected to act on them. Simultaneously, it is not clear why states would be motivated to comply with HR, given that doing so often requires them to cede some of their sovereignty and allow interference with their domestic laws (Besson, 2014: 35; Schaffer, 2014: 223). This tension, according to some scholars, is also why HR have increasingly come under scrutiny and faced resistance.

Therefore, there must be a compelling rationale for why states should commit to international HR (Schaffer, Follesdal, & Ulfstein, 2014: 1-4). I argue that this rationale cannot rest solely on moral grounds, as moral reasons often have limited binding power in inter-state relations, especially with non-democratic states. Furthermore, since HR are

intended to serve as the moral foundation for the global community, it becomes problematic to presuppose moral standards of justice, as this could lead to a circular argument where HR would essentially justify themselves.

3.3. A Legitimacy Conception for Human Rights

Therefore, I advocate for a more pragmatic approach to legitimising HR, where moral considerations play a secondary role, and the focus is primarily on aligning with the interests of states. To avoid any misunderstanding, I am not suggesting that HR themselves should not be moral or normative. Rather, I am arguing that the standard for legitimising HR must be primarily pragmatic. This pragmatic foundation is essential for establishing a strong basis for the moral validity of rights and for gaining the support of a wide range of stakeholders – including non-democratic states. On this basis, I will now present my own framework for the legitimacy of HR, consisting of six criteria.

3.3.1. Consent Legitimacy

Firstly, contrary to scholars like Raz (1986), Buchanan (2003), and Besson (2014), I place consent at the core of my pragmatic account of HR legitimacy. To show why this is essential, I must revisit my concept of Bottom-up Universalism from section 2. I have argued that for HR to be genuinely universal, they must be universal in both content and creation process. HR are not trivial; they exist through the mutual recognition and commitment of their subjects to uphold them. Their moral value and universal status derive solely from people agreeing on them. As Hannah Arendt ([1951] 2017: 394) points out, 'we are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.'

The question then arises as to whether consent must come from states or from the people. I argue that it must come from both. In the case of states, explicit consent takes

the legal form of ratifying relevant treaties, while enforcing them requires ongoing consent through credible and continuous commitment. This is crucial because explicit legal consent enables the international community to hold states accountable for their actions, as states are the primary duty-bearers of HR (Schaffer, 2014: 234-236). Additionally, it helps protect weaker states from exploitation by stronger ones (Buchanan, 2003: 192). Importantly, as mentioned earlier, consent must be unconstrained and free from coercion, as any form of pressure would undermine both the legitimacy of the consent and the credibility of the state's commitment.

Regarding the normative objection that non-democratic states cannot legitimise HR through their consent due to their illegitimate rule, I agree with Schaffer (2014: 232-234): he argues that the 'reduction objection' is counterproductive in the context of HR, as it allows oppressive governments to evade accountability for their actions. Buchanan and Keohane (2006: 412) add that 'withholding support from institutions because they fail to meet the demands of justice would be self-defeating from the standpoint of justice itself, because progress toward justice requires effective institutions.' Moreover, Besson (2014: 61) points out that recognising the consent of non-democratic states as a legitimising factor could potentially encourage democratisation from within those states.

However, the consent of states alone is not sufficient. Sadurski (2015: 406) argues that individuals have the right to consent to the rules that govern them. Beyond this moral argument, consent is also essential from a pragmatic perspective for the substantive standard of legitimacy. HR can only achieve their desired outcomes if both individuals and states are genuinely committed to them, and it is through consent that this commitment is solidified (Buchanan & Keohane, 2006: 406). Here, the substantive and sociological dimensions of legitimacy are interconnected: HR can only be effective

when the relevant community is committed to them, and in turn, the community will only commit to the institution if they trust in their effective implementation (Schaffer, Follesdal, & Ulfstein, 2014: 14). While explicit consent from the people, such as through a global democratic vote on HR, would be ideal, it is not realistically feasible. Therefore, the consent of the people must be implicit. This could be ensured, for example, through independent surveys conducted by reputable organisations.

Thus, the first two criteria for the legitimacy of HR are (1) Explicit State Consent and (2) Implicit People's Consent. Both forms of consent must represent an ongoing, credible commitment that is free from coercion, thus fulfilling the procedural dimension of universalism in its creation process and upholding.

3.3.2. Substantive Legitimacy

The next two criteria for the legitimacy of HR emerge from the substantive dimension of the legitimacy debate and are closely related to my definition of Bottom-up Universalism. First, we require Content Universalism, meaning that the content of HR must be acceptable and applicable across all cultures. To achieve true universality, the principles enshrined in these treaties must resonate with the diverse values and norms of different communities, ensuring that HR are globally inclusive and relevant. As Schaffer (2014: 223) points out, '[w]e cannot expect individuals to act on principles that they find unintelligible, opaque or equivocal, especially not as requirement of legitimacy.'

This aspect becomes particularly relevant in light of the parochialism objection, which criticises HR for embodying a narrow set of rights that may not be inclusive of the moral beliefs of other cultures (Buchanan, 2008). Buchanan and Keohane (2006: 432-433) address this issue by proposing that a standard of legitimacy should be based on 'minimal moral acceptability'. They argue that it is essential to establish a legitimacy

standard that can be accepted from diverse moral perspectives without assuming a higher degree of moral consensus than what actually exists (idem: 409). This approach seeks to ensure that HR are inclusive and applicable across various cultural contexts, thus enhancing their legitimacy on a global scale.

Some might contend that a minimal moral standard of legitimacy is insufficient for adequately safeguarding HR, arguing that the demands of HR are too substantial to be grounded in such a basic threshold. However, from a pragmatic perspective, I argue that it is preferable to establish a minimal standard that everyone can agree upon and that is more likely to be adhered to, than imposing a higher standard that many cultures find unrealistic or alienating due to perceived disregard for their moral beliefs. In other words, an inclusive and achievable standard enhances the likelihood of broad commitment and adherence to HR across diverse cultural contexts.

However, this objection should not be taken lightly. To address it, I propose a second substantive criterion, which I term Epistemic Adaptation. This concept, also drawn from Buchanan (2008: 60), acknowledges that the task of specifying HR is ongoing and that cultural and environmental conditions evolve over time. While the fundamental human interests may remain constant, changing circumstances necessitate adaptation (Buchanan & Keohane, 2006: 419). Epistemic adaptation also allows for the organic development of HR from within (Yasuaki, 2000: 78). Although the initial standard of HR might be minimal, it can adapt and improve over time, gradually raising the threshold as conditions change and understanding deepens. This aspect also resonates with the criterion of ongoing consensus, as a dynamic set of HR is more likely to enjoy the continuing support of the global community (Buchanan, 2008: 60-61).

Hence, the next two criteria for legitimacy are (3) Content Universalism and (4) Epistemic Adaptation. Content universalism ensures that HR are morally acceptable to all cultures by considering their unique characteristics and values. Meanwhile, epistemic adaptation allows HR to navigate through a constantly changing world, enabling them to evolve and grow from within.

3.3.3. Procedural Legitimacy

The last two criteria for legitimacy of HR are based on the procedural dimension and are referred to as (5) Universal Representation and (6) Accountability. Universal Representation essentially means that every state or cultural community that is subject to HR ought to be represented in its creation and relevant decision-making processes. The moral argument therefore is based on a similar democratic assumption as the criterion of implicit people consent. Every party involved in HR has a right to participate or to be represented in the creation process and in the continuing adaptation. As Besson (2014: 46-47) points out, '[d]emocratic coordination provides the most legitimate mode of coordination in circumstances of reasonable disagreement over matters of justice.' However, as previously noted, it is important not to overemphasise the application of democratic principles in every situation. As Sadurski (2015: 403) argues, democracy is crucial for legitimacy only in decisions and norms that are 'choice-sensitive', where it is vital that outcomes truly reflect the distribution of preferences and perspectives within the relevant community. In other cases, we must acknowledge that democracy is not the sole legitimate form of social organisation. This refers to the pragmatic view: although many states are not themselves democratic, most – particularly smaller or weaker states – endorse democratic principles in the international arena, as this enables them to influence the outcomes of negotiations.

The other procedural criterion of Accountability relates to the argument by Joshua Co-hen and Charles Sabel (2005: 771-772): to ensure legitimacy, mechanisms must be in place to guarantee that institutions adhere to procedural standards, such as integrity, impartiality, and requisite expertise. To achieve this, the authors propose a combination of transparency measures, judicial hearings, judicial reviews, and the aforementioned representation (ibid.). Furthermore, from an epistemic perspective, it is essential to ensure that HR institutions are well-informed by experts and relevant epistemic com-munities in their decision-making processes (Buchanan & Keohane, 2006: 432-433). They pragmatically suggest that states are more likely to comply with HR institutions when it is ensured that these institutions are unbiased, uphold integrity, and are well-informed, thereby being held accountable for their actions. As previously noted, HR institutions often make decisions that do not align with individual states' interests. Therefore, there must be content-independent reasons for those states to comply (Raz, 1986: 75).

I would like to briefly address three potential objections. First, some might contend that the criterion of Content Universalism alone is sufficient, rendering Universal Represen-tation unnecessary. However, I argue that the process is as crucial as the content itself. For HR to be accepted as legitimate, it is essential that states and cultures feel they have been part of the process, with a genuine opportunity to contribute and shape the outcome. Moreover, from a pragmatic standpoint, it is highly improbable that a single philosophical mastermind could exist; the best way to achieve a universally accepted content is to include all relevant parties in the creation process. Second, I want to clarify why I do not consider the actual success of HR to be a necessary condition for their legitimacy. Some scholars, such as Thomas Christiano (2004), argue that an institu-tion's legitimacy depends solely on producing the right outcomes. However, this view

contradicts my argument, as I contend that HR are failing to produce the right outcomes precisely because they lack legitimacy. Finally, some might argue that my demands for Universal Representation, Content Universalism, or Implicit People's Consent are too idealistic to align with my call for a pragmatic approach to legitimacy. However, I contend that it is the very project of universal HR that is idealistic and difficult to achieve, making the standards of legitimacy necessarily high.

In summary, I have developed a specific set of six criteria for the legitimacy of HR: (1) Explicit State Consent, (2) Implicit People's Consent, (3) Content Universalism, (4) Epistemic Adaptation, (5) Universal Representation, and (6) Accountability. These criteria are drawn partly from existing literature on the issue of legitimacy and partly from my definition of universalism. Unlike other authors, I specifically tailored my approach to the legitimacy of HR within the context of internationalism. While many scholars tend to focus on a single strand of legitimacy, my account incorporates a complex interplay of different dimensions, including sociological, substantive, and procedural considerations. Each of these criteria is a necessary condition for HR to be considered legitimate, aligning with my conception of Bottom-up Universalism.

4. The Illegitimacy of Human Rights

In this final step, I will connect the dots to demonstrate that contemporary HR fail to meet some of these standards, thereby lacking both legitimacy and universality. To do this, I will synthesise the criticisms from Section 2 with the set of criteria for legitimacy I have developed in section 3, showing how these issues undermine the legitimacy of HR. Specifically, I will argue that HR fall short in meeting the above-mentioned criteria of (5) Universal Representation, (3) Content Universalism, and (1) Explicit State Consent. Finally, I will address an important objection regarding my use of legitimacy.

4.1. Incomplete Representation

To begin with, as discussed in section 2, the creation of the UDHR in 1948 involved the participation of only 58 states, with a significant underrepresentation of African and Asian countries (Baxi, 2006: 228). On the one hand, many of these African and Asian states were still under colonial rule at the time (Glendon, 2001: 223-225). On the other hand, the overrepresentation of Western states in the original drafting committee reflected their dominant position in the post-war world order (Wieviorka, 2013: 1946). This starkly undermines the criterion of Universal Representation from the outset. As an objection, one could argue that the legitimacy of HR has increased as more states have joined HR institutions over time. Donnelly (2013: 55-56), for instance, notes that by 2012, an average of 172 states had ratified the six main HR treaties, suggesting a broad claim to legitimacy. However, I contend that while a majority of states may now endorse HR, HR do not necessarily represent the majority of states. In other words, although many states have signed these treaties, they were not adequately represented in what Sadurski (2015: 403) refers to as 'choice-sensitive' processes during the formative stages of these HR frameworks.

Furthermore, even today, it is questionable whether choice-sensitive processes truly meet the standard of universal representation. As Zeid Ra'ad al-Hussein, former Director of the Human Rights Council, observes, the overwhelming power of the five permanent members of the United Nations Security Council significantly impedes full democratic representation (Al Jazeera, 2018). These members often exploit their veto power to advance their own geopolitical interests, thereby undermining egalitarian decision-making processes. This highlights how, even in the present day, economic and geopolitical power profoundly affect equal representation in HR-related decision-making. This dynamic also partially undermines the criterion of Accountability. The strong

influence of powerful states such as the United States, China, and Russia hampers HR institutions' ability to uphold standards of impartiality or conduct proper judicial hearings (de Varennes, 2006: 76).

As Besson (2014: 37) summarises, 'human rights have not been deliberated and adopted by highly inclusive international democratic procedures the way constitutional rights have; they are deliberated and adopted […] through procedures that are not necessarily inclusive, egalitarian and transparent.' Therefore, HR, both in their creation process and in their current implementation, fail to meet the standard of Universal Representation. As a result, HR also partially fall short of the standard of (6) Accountability, undermining its own legitimacy.

4.2. Partiality of Content

Closely related to, or even a direct consequence of, the lack of Universal Representation is the failed standard of (3) Content Universalism. Many cultural relativists and anti-colonial thinkers have pointed out that HR are deeply imbued with Western liberal ideology. For instance, Murphy (1980: 436) argues that liberalism undermines the validity of HR by placing the individual at the centre of its political theory. Drawing on examples from the discussion in section 2, he observes that many cultures in the Islamic world have an aversion to liberal individualism (idem: 439). Moreover, the emphasis on private property, a principle enshrined in HR and championed by Western states, often clashes with the concept of collective rights prevalent in many developing countries (ibid.). Similarly, Obinna Okere (1984: 148) notes that the African conception of the individual is not that of an isolated being but rather one deeply embedded within and connected to its social group, driven by the virtue of solidarity. Additionally, Yasuaki (2000: 59) highlighted that many Asian cultures do not align with the Western-centric

emphasis on legalism in international institutions. All of these examples set out a clear bias of content of HR towards Western Liberal thinking and an underrepresentation of other cultural moral worldviews (Mouffe, 2013: 31-32).

Even more concerning is that HR not only appear biased and partial towards the West but also actively reinforce imperial thinking due to the deeply entrenched racism within the Liberal tradition (Samson, 2020: 13). It is not that HR themselves are inherently racist, but rather, as Mahmood (2009: 860) describes, they emerge from an underlying substrate shaped by Western ideologies. Central to this is the idea of a hierarchical mapping of cultural progress, which perpetuates the notion of savagery in cultures that do not conform to the standards of civilisation as defined by the West (Tully, 1995: 65, 71, 80). Some might argue that HR have evolved significantly since their inception. For example, Nickel (2007: 170) highlights that HR have improved over the years and played a crucial role in opposing imperialism, granting former colonies sovereignty and self-determination. This is true and further proves that HR meet the legitimacy standard of (4) Epistemic Adaptation. However, I maintain that the foundational issues within HR persist. Despite efforts toward greater inclusivity and more universal content, the roots of HR are still deeply embedded in Western liberal thought, and this foundational bias prevents them from fully achieving Content Universalism.

4.3. Inadequate Consent

Finally, in light of the previous critiques, it is highly doubtful that HR emerged from genuine consent free of coercion. As Hassoun (2012: 73) argues, 'many countries' participation in international institutions is not voluntary in the way that becoming a member of a club is voluntary. […] Sometimes these countries do not have other decent options and, so, are not free to resist these organizations' conditions.' This

involuntary participation often stems from the geopolitical or economic domination exerted by superpowers such as the United States. In the context of former colonies, it is a consequence of neo-colonial structures, where these countries lack the capacity to resist Western domination (Udombana, 2023: 288). As discussed earlier, many scholars highlight the persistent influence of colonial powers through ideological and epistemological domination (Fanon, [1961] 2001: 34-35; Nandy, 1983: XI; Mahbubani, 2009: 29). Consequently, even though the majority of the global community has ratified HR treaties today, it is highly improbable that this consent is entirely voluntary and free from coercion.

Furthermore, even though most states participate in HR institutions, many are increasingly losing faith in their legitimacy, which jeopardises the aspect of continuing consent. This erosion of trust often stems from the hypocritical use and abuse of HR by powerful states to advance their own agendas (de Varennes, 2006: 76). As Yasuaki (2000: 80) points out, '[i]n many cases, self-righteousness, hypocrisy, arrogance, double standards and excessive aggressiveness on the part of the West, especially the U.S., not only have hurt the cause of human rights, but have been counterproductive.' The most recent example of this hypocrisy is the refusal of many Western states to acknowledge the ongoing HR violations by Israel against the Palestinian people, while at the same time condemning other states such as China for oppressing the Uyghurs (Charbonneau, 2022). These states – above all the US – have consistently ignored legal judgments by the ICJ and repeated admonitions by the HRC and the High Commissioner for Human Rights (International Court of Justice, 19 July 2024; Human Rights Council, 2024). Why would states and their populations consent to an institution when its most ardent proponents are simultaneously exploiting it for their own advantage? Both aspects – ideological and political domination, and double standards by

powerful states – not only undermine the criterion of free and genuine (1) Explicit State Consent but also call into question the genuine (2) Implicit People's Consent.

4.4. The Inconsistency Objection

Before concluding this chapter, I must address a significant objection to my argument. Throughout the discussion, I have criticised HR for being Western-centric and for allowing Western powers to exert ideological and epistemological domination, thereby undermining the legitimacy of HR. An attentive reader might object that the very concept of legitimacy itself springs from the Western-Liberal tradition, exposing my argument to accusations of inconsistency. This is a serious objection, as many of the authors I have cited in this paper base their theories of legitimacy on liberal scholars such as Thomas Hobbes, John Locke, and John Rawls (Hessler, 2014: 120; Sadurski, 2015: 424-426; Buchanan & Keohane, 2006: 424). While I acknowledge the connection between the concept of legitimacy and Western thought, I do not believe this undermines my argument.

Firstly, it is essential to recognise that although the concept of legitimacy is deeply influenced by Western thought, similar ideas exist in many other cultures worldwide (Liu, 2017). The question of who is justified to rule is not unique to the West. Secondly, a significant challenge stems from the limited alternative perspectives in the academic literature on the legitimacy of international institutions. This is especially true in the context of HR, where it has been difficult to find diverse viewpoints from various cultural and academic backgrounds. This scarcity, too, is a consequence of Western epistemological domination. As Dipesh Chakrabarty (2000: 4) points out, the 'phenomenon of "political modernity" […] is impossible to think of anywhere in the world without invoking certain categories and concepts, the genealogies of which go deep into the

intellectual and even theological traditions of Europe.' However, there is a crucial distinction between my critique of Western-centrism and my use of a Western concept. Western domination has led to the oppression of other states and cultures, thereby undermining the original purpose of HR. In contrast, I aim to challenge this dominant position by engaging with a Western concept in a way that seeks to balance power and representation. I have not argued that Western genealogy or culture is inherently flawed, but rather highlighted how its dominant position has compromised the legitimacy of HR.

In summary, in section 4 I have demonstrated how the legitimacy of HR, as defined in the previous section, is inadequate in several key areas. Firstly, I have shown that during the creation process of HR, many states and cultures were not adequately represented, with Western states holding a dominant position. This imbalance undermines the criterion of (5) Universal Representation and partially weakens the criterion of (6) Accountability. Secondly, I have argued that this lack of representation has led to a bias in the content of HR, skewed towards Western values and failing to adequately reflect the perspectives of other cultures, thereby undermining the criterion of (3) Content Universalism. Lastly, while most states have ratified HR treaties, I have pointed out that this consent was often not given freely, and the hypocrisy of some powerful states has further eroded support for HR. This diminishes the legitimacy criterion of (1) Explicit State Consent and arguably (2) Implicit People's Consent as well.

5. Conclusion

In this paper, I have argued that human rights lack legitimacy, and therefore fail to serve as a truly universal standard. By addressing this issue, I have addressed the initial research question of why HR are not effectively upheld and protected, and what the

underlying issues preventing their realisation are. Furthermore, I have sought to fill a gap in the existing literature. Much of the criticism surrounding HR has focused on concerns such as cultural relativism, ethnocentrism, enforceability, and the lingering effects of colonialism. However, relatively few scholars – though this number is growing – have engaged with the issue of legitimacy in international institutions, with HR being largely overlooked. The existing literature addressing this topic tends to focus either on legal aspects of legitimacy or operates solely within a theoretical framework.

Based on this literature, I have developed a new account of legitimacy, tailored to the issue of human rights and consisting of six criteria: (1) Explicit State Consent, (2) Implicit Individual Consent, (3) Content Universalism, (4) Epistemic Adaptation, (5) Universal Representation, and (6) Accountability. With this analytical framework, I have shown that HR, in their current constitution, fall short of the necessary standards of legitimacy. This shortfall is largely due to the aforementioned points of criticism, such as power imbalances, biases towards Western Liberalism, and the lingering effects of colonialism. As a result, HR fail to fulfil their own claim of being truly universal.

However, the question is what this lack of legitimacy implies for the broader project of HR. While this is a complex issue that requires further research, I do not wish to end on a pessimistic note. Instead, I would like to offer a brief outlook on potential paths forward. As I have mentioned earlier, I believe that international HR represent our best chance to navigate the challenges of our increasingly interconnected and multicultural world. Thus, we should be cautious about hastily dismissing the entire concept. As Buchanan and Keohane (2006: 408) point out, HR institutions have the potential to coordinate behaviour in the international arena in mutually beneficial ways, to reduce transaction costs, and to provide public goods for peaceful coexistence. Furthermore, HR can serve as a foundation for global governance, legitimising other institutions and

states and providing a powerful tool for individuals to protect themselves against coercion and abuses of power. Lastly, if approached correctly, HR can promote more inclusive representation of interests, particularly those of weaker agents, including both individuals and states. This inclusivity can help mitigate the risks of parochialism and power imbalances that have historically undermined the legitimacy and effectiveness other international institutions.

That being said, I do not believe that the current framework of HR can meet these expectations due to its inherent illegitimacy. Although there has been significant progress over the past decades, bringing HR closer to their ideal form, some fundamental flaws cannot be corrected or evolved away because they are too deeply engrained in the core of what HR are today. As a result, I propose a radical solution: HR need to be relaunched and reconceptualised from the ground up. This reconceptualization must adhere to the six criteria of legitimacy that I have developed throughout this paper. However, most importantly, it must be grounded in the two-dimensional concept of Bottom-up Universalism. This would ensure that all states and cultures are included in the creation process in an egalitarian and deliberative manner, and that the content of HR reflects the diversity of moral beliefs and worldviews across different cultures. As Chantal Mouffe (2013: 32-35) has argued, we must conceive of modernity as an 'open-ended horizon', recognising that modernity is not a singular, linear path but a space of 'multiple modernities'. Only through such a genuinely universal process can other crucial criteria for legitimacy be achieved.

To end with a quote by Aimé Césaire ([1956] 2010: 152), '[m]y conception of the universal is that of a universal enriched by all that is particular, a universal enriched by every particular: the deepening and coexistence of all particulars.' Thus, the future of human rights should not merely be about fixing a flawed system; instead, it represents

an opportunity for a new beginning – one that creates Bottom-up Universalism from all particularities and thus ensures the legitimacy for human rights.

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