

Should States ratify human rights conventions?

Erin Kelly, Tufts University

What are the basic issues?

1. Understanding the nature of human rights
2. Promoting the cause of human rights
3. Considerations of efficiency
4. Protecting democratic ideals and procedures

- Understanding the nature of human rights:
 - Which rights are *fundamental*?
 - What is the core application/scope of each fundamental right?
 - How should we balance rights against each other when they conflict (religious freedom, gender equality, cultural rights)?

- International treaties and instruments help us to answer these questions when they are supported by an evolving public rationale for core concerns.
- Call this a conception of *international public reason*: a public rationale for core concerns that transcends intransigent moral disagreements and cultural differences.

Function and Legitimacy

- Human rights could be said to have a certain *function*: to identify shared obligations to persons as such that can be understood by and justified to an international society of peoples without relying on contested conceptions of the good.
- International legal instruments would be *legitimate* when they are effective tools for promoting human rights that have a reasonable and public rationale.

– Two ways to proceed:

- Specify a truncated set of concrete obligations (prohibitions on torture, slavery, forced marriage, arbitrary arrest, right to trial, etc...)
- Elaborate vaguer and more abstract categories of shared interests with ample “margins of appreciation.”: meaningful work, freedom of expression, respect in family life, cultural and social equality, etc.

Promoting the cause human rights: two angles

- Intra-national pressure: how do we get ourselves to comply? How do we self-monitor? The more tools at our disposal the better. Why stop at a minimal, concretized list of rights?
- International pressure on flagrant violators: how do *we* get *them* to comply? Here a truncated list of rights compatible with reasonable toleration for cultural differences and a clear sense of ranked priorities may be more effective.