

Spasimir Domaradzki

PhD, Lazarski University

ORCID: 0000-0001-5794-6532

**HURST HANNUM, *RESCUING HUMAN RIGHTS,*
A RADICALLY MODERATE APPROACH
[CAMBRIDGE UNIVERSITY PRESS, CAMBRIDGE-NEW YORK-
PORT MELBOURNE-NEW DELHI-SINGAPORE 2019, 223 PP.]**

I am very grateful to the anonymous reviewer of our paper Domaradzki S., Khvostova M., Pupovac D., *Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse*¹ for bringing to my attention Hurst Hannum's book *Rescuing Human Rights*. What caught my attention immediately were the two very apt points made in the Hurst Hannum's book title itself. Just as Hannum, I also feel that there is a need to rescue human rights and I also believe that the only way to do that is to emaculate it from the ideological and activist reverberations that have largely taken over the concept of human rights itself.

Hurst Hannum accents on two pertinent and largely ignored by human rights activists' problems. Firstly, the growing attempts to address every social problem from a human rights perspective and secondly, the blurring line between binding legal obligations on governments and broader issues of ethics, politics and social change. As the author explicitly underlines, his book is set up around

¹ S. Domaradzki, M. Khvostova, D. Pupovac, *Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse*, "Human Rights Review" 2019, Vol. 20, pp. 423–443.
DOI: 10.1007/s12142-019-00565-x.

three basic principles: international law does matter; the universality of human rights is the necessary modicum for global fairness; maintaining the difference between law and morality and law and politics is important (p. 158). Although Hannum's book principles clearly set it in the liberal and progressivist framework that can hardly be reconciled with much more conservative and skeptical approaches towards international law (including human rights) expressed by Jeremy Rabkin² or Chantal Delso³, he also acknowledges the damage done to the human rights by its unlimited and ideologically biased exploitation. Regardless of readers' positions towards Hannum's principles, he grounds his deliberations in the "belief that human rights cannot provide dispositive answer to all of the world's problems although they may be necessary precondition" (p. 158).

The cornerstone of Hannum's idea is to narrow the human rights perspective to the existing legal framework of the international human rights law (IHRL) as a tangible, precise and relatively narrow toolbox that has its clear limits. In that sense the aim of the book is to remind the limits of the human rights mechanisms and to discourage the omnipresent attempts for stretching the concept of internationally recognized human rights to an endless number of political, social, economic and other aims. As Hannum puts it "human rights must be distinguished from other worthy initiatives, such as the prosecution of international criminals, saving the environment, reducing poverty, making business more responsible, and preventing or ending violent conflict" (p. 4). Simultaneously, the book advocates a robust understanding of human rights universality. "Universality does not mean uniformity and local variations in interpretation and practice should not automatically be rejected" (p. 4). Ultimately, universality and limitation of the human rights are the two pillars of Hannum's deliberations.

Hannum acknowledges the damaging impact of the recognition of human rights as a western neocolonialism and continuously repeats the need to defeat this myth. Hence, he advocates a flexible and common-sense approach adjusted to the political, economic, social and cultural specifics of the states. Hannum's flexibility is grounded in the European Court of Human Rights judicial practice acknowledging the margin of appreciation as an essential tool to adjust the sense and meaning of the regional human rights standards to each country.

The book's journey starts from a critical reflection on the blurring of international criminal law with human rights. While focusing on the role of the International Criminal Court (ICC), the author accurately points out that confusion between the responsibility of the state to protect human rights and the culpability of an individual who commits a crime is paradigmatic of attempts to infuse human rights into unrelated concepts, usually to the detriment of both. ICC's

² J.S. Rabkin, *Law Without Nations?: Why Constitutional Governments Requires Sovereign States*, Princeton University Press, Princeton 2005.

³ C. Delso, *Unjust Justice, Against the Tyranny of International Law*, ISI Books, Wilmington DE 2008.

jurisdiction extends not to human rights violations or to mass atrocities but to the three traditional categories of international crimes already mentioned, namely genocide, war crimes and crimes against humanity and since July 2018 also over the crime of aggression (p. 12). While exposing the obviousness and confusion of the connection between human rights and international criminal law, Hannum concludes that combating impunity became the new human rights mantra, without paying attention to the fact that the acts being punished were generally crimes under domestic law and not necessarily violations under internationally defined human rights (pp. 16–17). Among others, the author makes an important point that human rights violations, even if serious or gross or massive violations, are often not crimes and are attributable to governments, not to individuals (p. 22). The punitive approach of criminal law is also quite different from the transformative goals of international human rights law (p. 23). Ultimately, ICC is limited to the most serious crimes and domestic crimes like murder, torture and kidnapping and it will rarely be possible to hold everyone who committed such act accountable. Hannum aptly concludes that confusing these goals (international criminals and human rights) distorts priorities and diminishes the attention that should be paid to the more boring yet more pervasive human rights violations faced by most of the world's population most of the time.

In chapter 3 the accent shift towards the growing deliberations on the role of non-state actors like Multinational Corporations (MNC's), criminals, terrorists, armed opposition groups beyond government control, intergovernmental organizations, religious groups and even individuals in the context of human rights protection. While devoting the larger part of the chapter to the role of MNC's Hannum points out the often confusion between human rights obligations and responsibility, where the latter is practically mere recommendations that are purely voluntarily. Hannum acknowledges also the danger that through transferring the responsibility for human rights to corporations the state will be able to relief itself from the duty to respect them (p. 38) and reminds the need no to confuse ethical and moral principles with legal obligations (p. 39). While siding with the relevance and importance of Hannum's arguments, I would claim even more radically, that the attempts to stretch human rights to non-state actors not only shift the accent from the state-individual relationship, but also downplay them to a negotiable list that hardly upholds the clarity and explicitness of human rights norms. This instrumentalization harms much more the human rights norms themselves than improves the MNC's or other non-state actors behaviour.

Logically, in chapter 4 Hannum continues his deliberations on the spill over of rights after the 1970s following Wiktor Osiatyński's⁴ argument that the human rights become the *lingua franca* of the whole world, and are considered a key universal, all-encompassing principle of the universe. Regardless

⁴ W. Osiatyński, *Human Rights and their Limits*, Cambridge University Press, Cambridge 2012.

of the problem: globalization, environment, corruption or technology, as Hannum mentions “the hope seems to be that chanting the mantra of human rights will make the resolution of any complex problem easier” (p. 44). Concluding his interesting deliberations on each of these topics, Hannum argues that “Conflating HR with such issues as creating a sustainable environment, regulating trade, ending corruption, and dealing with rapid advances in technology reduces rights to mere tools to achieve the other goals rather than laws to be followed and enforced” (p. 56).

The next chapter is an extremely valuable reflection on the endless expansion of rights supported by numerous examples, often related to the author’s personal research and observations. Taking Philip Alston’s standards for the creation of a new human rights law, Hannum juxtaposes them with the observed practices in the UN special rapporteur’s reports and the misuse of the UN Human Rights Councils to expand or detract from the existing norms (p. 78). Within the UN special procedures Hannum notices a significant change of topics from physical security and civil rights to a consideration of a number of socioeconomical topics – health, food, water, education and housing, including even more narrower categories like minorities, indigenous people, albinism or leprosy, human rights defenders (pp. 67–68). After Rosa Freedman and Jacob Mchangama⁵ the focus is being shifted away from the relationship between the state and the individual and toward examining state policies and foreign relations. While reflecting on the problem of migration, Hannum makes a very good point that “By framing migration in human rights terms, advocates of liberal immigration policies misstate what human rights law does provide, and they contribute to popular perceptions of nationalists that human rights are part of the problem” (p. 77). While providing an extensive list of new rights, such as the rights of peasants and women cultural rights, rights of elderly, landscape and human rights, human right to host Olympics or Julian Assange’s right to sunbathe (pp. 71–73), Hannum reminds that IHRL sets only a minimum standard for social justice and equity, but national level is better equipped to create the relevant conditions. Attempting to regulate ever more narrow slices of life under ever more diverse circumstances through promoting new rights runs a serious risk of undermining both the legitimacy of human rights and their universality. The result may be simply to expand the number of rights that are routinely ignored rather than to bring real help to those whose rights, no matter how narrowly construed, are already being violated.

In chapter 6 the author carefully navigates within the sensitive topic of sex and gender, reaching for a very valuable conclusion that the non-discrimination should not lead to social engineering and lofty expectations that the forces of minority rights will reshape the existing social orders. Just as religious arguments

⁵ R. Freedman, J. Mchangama, *Expanding or Diluting Human Rights?: The Proliferation of United Nations Special Procedures Mandates*, “Human Rights Quarterly” 2016, Vol. 38 (1), p. 164.

cannot serve as the only line of resistance to change, the sex and gender aspects cannot preoccupy the social body.

The seventh chapter of the book is devoted to the flexibility of human rights norms. Embedding his deliberations in Jack Donnelly's⁶ structure of concept, conceptions and implementation of human rights with decreasing level of relative flexibility (p. 98) the author discusses the flexibility of IHRL in its implementation. Against the background of the European Court of Human Rights "margin of appreciation". Hannum reminds the fact that most rights are limited and that states have the right to apply them in accordance with their political systems, but that does not mean that they can misuse them.

While advocating for some discretion in interpretation and implementation of human rights norms (p. 101) the main argument is about the balance between the cultural diversity and pluralism and the justification of any breach of universal human rights and fundamental freedoms. The author accurately criticizes the cherry-picking of human rights practices from particular country experiences and their lumping together into an ideal type of international demands (p. 103). Based on the example of Pussy Riot the author criticizes the new type of activism desecrating basic elements of societies as counterproductive and harmful for the human rights cause.

Hannum acknowledges the need to distinguish between true moral and cultural differences and attempts by authoritarian or repressive leaders to equate themselves with this national identity as a means of justifying their rule or discriminating against those within the country who are viewed as not "belonging" sufficiently to the nation (p. 116). Another valuable reflection in this chapter concerns the opposite decisions and logics guiding the European Court of Human Rights and the relevant UN bodies (p. 107).

The next chapter aptly entitled *Human rights hawks* touches upon the evolution of the responsibility to protect (R2P) and the connection between the International Humanitarian Law and the human rights laws. Hannum's extensive deliberations on the evolution of R2P highlight the basic dilemma how to reconcile the use of force for the sake of human protection within the undetachable bond between moral, geopolitical, economic and other considerations. Ann-Marie Slaughter's argument requoted from Backer and Schane's⁷ that "In Iraq, the United States had intervened and occupied – and things had gone to hell. In Lybia, the United States had intervened but not occupied – and things had gone to hell. And in Syria, the United States had neither intervened nor occupied – and things had still gone to hell" (p. 134). captures the essence of the dilemma. Hannum argues that a properly defined international responsibility to protect should

⁶ J. Donnelly, *The Relative Universality of Human Rights*, "Human Rights Quarterly" 2007, Vol. 29 (2), p. 281.

⁷ J. Becker, S. Shane, *Hillary Clinton, 'Smart Power' and a Dictator's Fall*, "New York Times", 27.02.2016.

be directed towards preventing widespread loss of life, whatever the cause – could be a meaningful advance in the humanization of international law and the protection of individuals under imminent threat, but it should not be done just for the sake of “doing something” (p. 134).

The ninth chapter deliberates on the role of the United States since the Carter presidency. Hannum’s overview makes two main points. Firstly, to look for consistency in the US policy is wrong, but there are traces of clear prioritization of human rights either through the following administrations progressivist or messianistic concepts. This chapter frames them in a liberal-conservative consensus towards the world. It embraces both major political parties, most of the press, and the multinational economy. Hannum follows Stephen Kinzer’s⁸ point “It leads to foreign policy that is not simply interventionist, but utopian, visionary, millenarian. Setting out to remake nations, and entire regions, seeking to implant our version of democracy in distant lands, deposing governments and imposing others in their place, springing to the rescue of people we consider oppressed – these are breathtakingly radical projects” (p. 155). Hannum eventually claims that the US must continue to support the masses of human rights activists across the globe since it is so far the only country that is able to push the IR decisively. Without them it will take much longer.

In the concluding, tenth chapter, the author returns to the importance of universality and flexibility. This chapter also reveals Hannum’s understanding of the importance of human rights. The author acknowledges that the human rights implementation is context dependent and they cannot be applied equally across the globe. However, what Hannum recommends is also the acknowledgement of the basic human rights as defined in the UDHR and the two 1966 covenants. Sound and clear as they are, the civil and political rights on one hand and the economic, social and cultural rights on the other, trigger completely different role of the state. Ignoring this fact is one of the main curses of the contemporary human rights system. Hannum provides an argument worth acknowledgment that ECS rights might be necessary precondition for the cherishing of political or civil rights (p. 160). Nevertheless, here he goes beyond the legalistic (lawyer) approach by conflating a “must do” rights with “Santa Claus wishlist”, as the Reagan administration has defined them. While insisting on the unified approach towards political, civil, economic, social and cultural rights Hannum blurs the rights also on p. 167 where he highlights that both ESC and CP rights can be improved, hence they are equal.

As H. Hannum rightly advocates throughout his book, human rights cannot resolve the myriad of political, economic and social problems and their best role is to old, classical one – to serve as a shield against direct abuse against the individual by the state. All the rest is subject to yet, another myriad of considerations

⁸ S. Kinzer, *What truly conservative foreign policy looks like*, “Boston Globe”, 13.12.2015.

that transform human rights from a shield to a tool – nationally and internationally. The national human rights standards should not ignore the historical and religious experiences that have shaped the existing human rights framework.

Concluding, for scholars looking with one eye to the evolution in the field of human rights this book is a very helpful source of information with details about the evolution of the human rights context in a wider variety of aspects stretching from particular topics like development, environment, sex, gender and many others to structural issues within the UN and regional systems of human rights protection. The author advocates the clear delineation of human rights from protection of the environment, obligations on business and non-state actors, eradication of poverty, ending corruption, promoting inclusion, social equity- should not be brought under the human rights umbrella. Furthermore, Hannum reveals some of the structural and personal weaknesses of the UN system and advocates the need for its improvement. Finally, this book challenges the dominant liberal and post-modernist argument about the decay of the state and provides clear rationale for the need of state in the XXI century human rights world.

