The Rights of Man Are the Rights of the Citizen

An Analysis of the Human Rights Regime
The Human Rights Regime

- Regime - set of rules and practices that govern a group of people. (Oakeshott, 2006)
- Magna Carter → Thomas Hobbes, John Locke, Jean Jacques Rousseau
- Thomas Paine - The Rights of Man
- Rights are what we as human are born with
- Denial or these rights is a violation of the natural law.
- This law supersedes and is the foundation of the modern political system.
Development of these rights is not necessarily natural but is a result of a very specific political development: Western.

This regime is not stagnant nor biologically determined
- If Natural = Biological
- Aristotle claimed that human beings are political Animals - Fukuyama Agrees.
  - Not necessarily rights based

Narrative of the Savage, Saviour and Victim (Mutua, 2001)

UN, States and other western political bodies carry this view

Metaphor shows the narrative construction of the human rights regime

Also shows how it is a subjective construction of western political and academic thinking
Paradox of the de-politicization of an essentially political issue. (Douzinas, 2013)

- Rights regime is a regime of law. This is a political process.
  - Thus rights regime is itself a political issue.
  - These issue are grounded in a subjective historical experience.

- Property Rights are a good example.
  - Economic
  - Capitalist
  - Western History
  - Easily moved out of the real of politics

- In a non-capitalist society what are the needs for property rights?
  - Thus is this universal? Or historically particular?
  - Essentialist Value Judgment
Why States are still the Enforcers of Human Rights

- Popular to say that Power has shifted from states to the International arena. (Schaap, 2011)

- Argument is that Power shifts up from states to TNO’s

- Argument is often taken too far. Power to enforce rights lies largely with the state

- Human rights regime has been created by the UN and its bodies, enforcement or lack thereof lies with states.

- WHY?
Monopoly of Coercive power

Paradox that while human rights regime protect people from arbitrary power of the state.
  - State is the only actor with the power to enforce this
  - Eg, To have a right to life for all citizens there must be a police force.

Weak States create weak rights regimes even in the west (Davies, 2011)
Without power the enforcement becomes rhetorical.
Andrew Schapp argues that people who are stateless still have rights as they have the right to have rights.
  - Who enforces this?
  - Philosophical position that does the stateless little good.
UN has little coercive power to protect stateless people
Nor power to take in those people and give them rights.
ICC and ICJ not binding.
Refugees as Stateless Peoples

- Hanna Arendt. People without citizenship in a state are left without legal recourse and protection. (Arendt, 1951)
- Thought experiment.
  - For many stateless individuals, breaking the law of any particular state leads them to better opportunities than they would have had if they had adhered to the law
- Are offered very little protection by any particular state
- The loss of citizenship for many people is identical to the loss of human rights.
- Jewish Diaspora a good example
- A good contrast with current refugee struggles.
  - Yemen, Palestine, Syria etc
Conclusion and Remarks

- Not an avocation for relativism of human rights
- Human rights are great
- Must acknowledge that they are a subjective and political process
- Require enforcement
- If we want all to have access to rights, its not enough to say they have them.
- Must provide political groups with the ability to protect stateless citizens.
- End with a question of how this could be done?