global-e



Responsibilities for Protecting Human Rights

February 15, 2008 | Volume 1 | Issue 3
Mark Gibney

Human rights are universal, meaning that each person possesses certain human rights by the mere fact of this person's humanity. What does not matter – or at least what should not matter – is where a person lives, how much money a person has (or does not have), whether that person's country has (or has not) became a party to

any particular international human rights treaties, and so on.

Who has the responsibility for meeting these “universal” rights? The (universal) response of states has been that each country is responsible for protecting human rights within its own borders – but that no state has human rights obligations that extend outside of its own territorial jurisdiction. But what if a country is not able or is not willing to protect the human rights of its citizens? Or what if human rights are being violated, in large part due to the actions of outside states? It is here that the silence of the international community has been deafening.

Thus, notwithstanding near-universal declarations of the “universality” of human rights, the responsibility for protecting human rights has been based almost exclusively on territorial considerations. What has this territorial approach to human rights given us? Unfortunately, not nearly enough. Looking at violations of economic rights alone, we live in a world where an average of 50,000 people die every single day due to preventable causes. Yet, notwithstanding this incredible level of human rights atrocities, the territorial approach to human rights has essentially gone unchallenged. However, this has started to change and it has come from the most unlikely of sources: the “war on terror.”

Human rights are universal, meaning that each person possesses certain human rights by the mere fact of this person’s humanity.

To state matters bluntly, the reason why “enemy combatants” are being held at Guantanamo Bay, Cuba and not in some location in this country is that American government officials are of the mind that U.S. obligations under international law do not extend outside the territorial boundaries of the United States. Under this (territorial) approach to human rights, the U.S. government is not bound by the Torture Convention and the Covenant on International Civil and Political Rights (both of which the U.S. is a party to) when it is operating outside the territorial borders of the United States. This same kind of rationale is behind the policy of “extraordinary rendition.” The idea is that the U.S. has not done anything wrong or unlawful when individuals outside the United States are being kidnapped and sent to some third country for “interrogation” purposes – albeit at the behest of, and under the direction and control of, American authorities. Again, the argument is that American obligations under international law are only applicable to actions within the United States.

Fortunately, most people have been able to see behind this façade. That is, they have recognized that territorial considerations should not be used in this manner to demarcate where a country's human rights obligations begin – but, more importantly, where they end. Most people seem to believe that torture is illegal whether it takes place in Fort Benning, Georgia, or Guantanamo Bay, Cuba, or at the Abu Ghraib prison in Iraq. In that way, the "war on terror" has helped us see that territorial considerations oftentimes make little sense in the context of protecting human rights.

This is not to suggest that "territory" does not matter at all or that states have the same human rights obligations outside their borders as they do domestically. Neither of these propositions happens to be true. Rather, each state has the primary responsibility for protecting human rights within its own domestic borders. However, what we have completely failed to recognize are the secondary responsibilities that the rest of the international community has when the territorial state has not been willing or able to offer human rights protection. And what also has to be said is that this is not simply a moral obligation – wouldn't it be a nice gesture if we provided some assistance to starving children in some other land – rather, it is a legal obligation. This is most clearly seen in the language of the International Covenant on Economic, Social and Cultural Rights, one of the so-called International Bill of Rights, whereby each state party to the Covenant has (legally) obligated itself to protect the economic rights of "everyone" by means of "international assistance and cooperation."

What does "international assistance and cooperation" mean? What it means is that when children in a particular country are being denied an education (to choose one example), this not only constitutes a violation of human rights by the territorial state – but this also constitutes a human rights violation on the part of the rest of the international community, which has pledged to protect those rights.

However, what we have completely failed to recognize are the secondary responsibilities that the rest of the international community has when the territorial state has not been willing or able to offer human rights protection.

The point is that human rights are universal, but so are the duties and responsibilities to meet those rights. This is what the framers of the International Bill

of Rights, and all of the other international human rights treaties, sought to achieve. This is the only way that the notion of human rights makes any sense. If human rights protection were something that individual states could (and would) do individually, there would be no need for any international conventions. Stripped to their barest essentials, what each one of these treaties represents is nothing less than this: that everyone has an ethical as well as a legal obligation to protect the human rights of all other people. Sadly enough, our inability to recognize the extent of our own human rights obligations has constituted the greatest human rights failure of all.

Tags

human rights



Mark Gibney is Belk Distinguished Professor at the University of North Carolina-Asheville.

View PDF