

## REVIEWS AND ANNOTATIONS

**Posner, Eric A. *The Twilight of Human Rights Law*. New York: Oxford University Press, 2014. 185 pp.**

The book “*The Twilight of Human Rights Law*”, written by an American legal scholar Eric Posner contributes to the ongoing discussion of where human rights are on the international level and where they are heading. During the last decades international human rights law expanded significantly as many countries committed themselves to human rights which also led to the proliferation of both human rights treaties and their institutions. But at the same time human rights continue to be commonly violated with unchanged intensity and major violators often remain unaffected. Therefore, human rights are not seen as an ultimate path to promote justice and prosperity of individuals any longer, but there are raising voices pointing out that international human rights law has reached a dead end. Posner strongly claims the latter point of view. However, it is merely his starting point, since he goes further by presenting even more sceptical argument that human rights failed to fulfil its main objective, which is to improve the well-being of people.

In effort to provide the explanation, why they have failed, Posner starts with a broader perspective and provides in chapter I and II a coherent historical survey tracing sources of human rights law, its treaties and institutions. The efforts to force states to make a commitment to human rights protection become evident not until the aftermath of the World War II. The Universal Declaration of Human Rights from 1948, although initially legally nonbinding document, was a significant step to overcome at that time still present Westphalian system based on the presumption that states are ultimately sovereign entities, that are allowed to treat their population as they see fit. The Declaration was then subsequently followed by several legally binding catalogues of human rights such as International Convention on Civil and Political Rights and many others. The proliferation of major treaties was accompanied by establishing various committees, councils or other bodies which were supposed to monitor compliance and promote respect for the rights. However, according to Posner, they mostly failed. This historical discourse however serves mostly as an introductory element for more empirical, theoretical and normative approach in latter chapters.

Posner identifies several reasons, all connected with each other, of why human rights law is failing to fulfil its purpose. First of all, human rights treaties are mostly written in general terms, which should allow their broader interpretation in order to be applicable on variety of situations or even to create previously unrecognized rights. However, it requires an institutional mechanism which is in Posner's view mostly non-existent. At the same time, the proliferation of rights enshrined in the treaties often cause ambiguity of their provisions leading to internal inconsistencies. Posner argues that treaties provide no guidance about the allocation of resources, which are in all states more or less limited. Therefore they have to necessarily do trade-offs on their own and invest certain amount of resources in favour of one set of rights at the expense of another.

Such deficiencies in treaties should be ideally resolved by the decisive and interpretative authority of international legal institutions. However, Posner shows his strong sceptical point of view as he believes that they are neither a solution in this matter. One might disagree with reference to the European Court of Human Rights which even Posner admits to be one of the strongest institutions. However, he presents a valid argument that the international legal institutions are considerably weaker than domestic courts as they are unequipped with real legal authority and also starved of fundamental resources.

International lawyers, political scholars and institutions themselves mostly admit this unpleasant truth, but it is also disputable if it is a reason strong enough to abandon this concept at all.

Posner argues that the persistent problem that cripples the effectivity of international institutions is that states deliberately maintain them in a state of a constant under-effectiveness. The states are

willing to enter into human rights treaties but they are highly unwilling to put significant resources to their enforcement as well as they are reluctant to submit themselves to international jurisdiction. This is certainly an interesting remark which also reflects an existing tension between formal commitments to human rights made by many states and the real political motivations as the strong multinational bodies would pose a threat to states' own interests.

The last chapter then closes Posner's sceptical attitude to the future of international human rights law by introducing three selected ways to solve its crisis. However, all three of them, namely prioritization of a narrow set of rights, use of margin of appreciation on a global scale or institutionalization he considers as dead ends. Posner therefore suggests abandoning so called idealistic approach within international human rights law and promotes a different one, inspired by development economists such as Amartya Sen, Enrico Spolaroe and Romian Wacziarg.

Posner suggests a radical change in the field of human rights law. He argues that countries engaged in human rights protection, such as USA and European states, should aim their focus to improve well-being of people in troubled countries through foreign aid instead of requiring their compliance with human rights treaties. Posner clearly explains that the misery of population is produced not only due to a bad government but it can also be a result of other deeper factors such as history, tradition or demography. These are factors western countries can hardly influence or even understand. He therefore suggests that foreign aid should be considered on individual terms to those countries that are most in need of help, regardless of their compliance with human rights treaties.

Posner's cure for human rights law is undoubtedly worth of considering, but one might object it also suffers from some inconsistencies. Firstly, helping countries that are most in need of help requires a consent on an international level about criteria determining what rights need to be protected the most. However, as Posner admits himself, massive proliferation of rights shows that international community, due to its heterogeneity, cannot come to a satisfactory agreement of what rights should be more fundamental than others.

Secondly, Posner's suggestion to promote industrialization of poor countries instead of democratisation might one consider as controversial as well. Is it plausible that building schools and roads while ignoring torture practices and corruption that could ultimately consume the aid itself would be better for the population? That is questionable.

Despite some inconsistencies, methodologically one must appreciate Posner's argumentation skills. Although the evidence are sometimes chosen selectively to support his claims he derives them from a variety of sources that are not reduced merely to normative texts but he also makes use of several empirical studies.

To sum up, Posner's book contributes to a vibrant discussion of international human rights law with a unique point of view that might be considered as much controversial as it is sceptical. Its impact is also furthermore escalated by a fact that it is accessible not only to lawyers and political scholars, but also to readers outside of the field of social sciences. However, the book is undoubtedly worthy of attention as it tries to disrupt existing "rose-tinted" vision of human rights and further more, it is a piece that has the courage to go against the grain, which is appreciated.

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