

## **Human Rights, Sovereignty and Democratic Iterations**

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Session 6, Keynote Lectures: “Human Rights – Global Culture – International Institutions”  
Our Common Future, Hannover, November 4, 2010

### **Slide Presentation**

Our Common Future, Hannover/Essen, 2-6 November 2010 ([www.ourcommonfuture.de](http://www.ourcommonfuture.de))

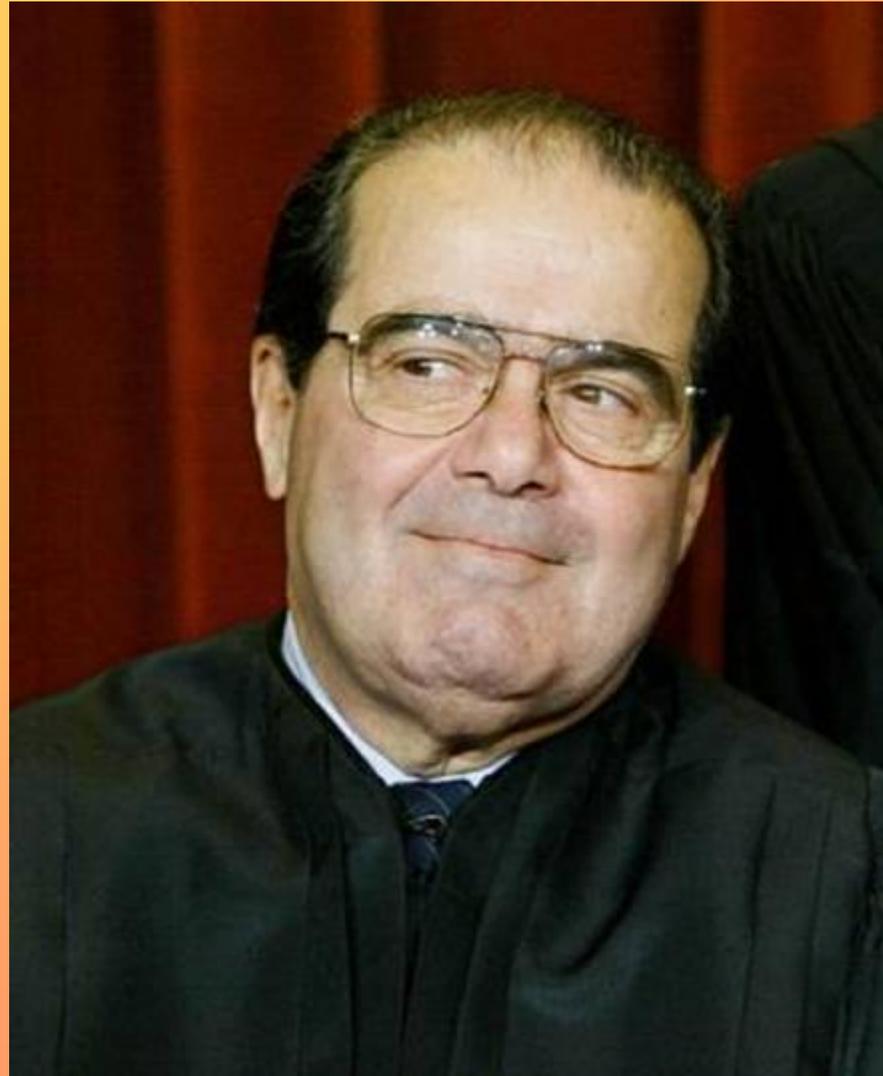


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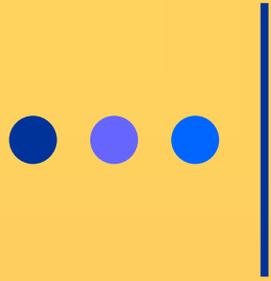
**Hannover- November 4, 2010**





## Cf. *Roper v. Simmons*, Justice Scalia dissenting,

- “The Court should either profess its willingness to reconsider all these matters in the light of views of foreigners, or else it should cease putting forth foreigners’ views as part of the *reasoned basis* of its decisions. To invoke alien law when it agrees with one’s own thinking, and ignore it otherwise, is not reasoned decision making, but sophistry.”[



# **The New Global Landscape**

**Major Human Rights Agreements since  
1948**



- The **Universal Declaration of Human Rights**, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948
- The **United Nations Convention on the Prevention and Punishment of the Crime of Genocide**, adopted by Resolution 260 (III) A of the UN General Assembly on December 9 1948 (Chapter II)



- The **International Covenant on Civil and Political Rights** (ICCPR; opened to signature in 1966 and entered into force in 1976, with 166 countries being parties to it as of 2010)
- The **International Covenant on Economic, Social and Cultural Rights** (ICESCR; entered into force the same year and with 160 signatories as of 2010)



- The **1951 Convention on Refugees** (entered into force in 1954)
- The **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW; signed in 1979 and entered into force in 1981, with 186 countries party to the Convention)



- o the **Convention on the Rights of the Child** (1989) with 193 state parties.



- **European Convention on Human Rights and Fundamental Freedoms**  
to which 20 countries in addition to the 27 EU members belong (signed in November 1950 and took effect in September 1953)
- **EU Charter of Fundamental Freedoms**



# Sovereigntisms

- **Nationalist Sovereigntism**(Former US Ambassdor to the UN, John Bolton; Justices Robert and Scalia)
- **Democratic Sovereigntism** (Skinner, Sandel and Nagel)



## Nagel, “The Problem of Global Justice”

- Nation-State: **indispensable framework of justice**
- There are no obligations of justice beyond borders besides “**natural duties**” we owe to each other like not to harm and when possible to help those in need
- Neither the global economy, nor transnational law, create ‘systems of cooperation’

# Cosmopolitan Norms: Neo-Colonial Tools of Empire or World- Domination?

- “The new humanitarian order, officially adopted at the UN’s 2005 World Summit, claims responsibility for the protection of vulnerable populations...Whereas the language of sovereignty is profoundly political, that of humanitarian intervention is profoundly anti-political .... The international humanitarian order, in contrast, does not acknowledge citizenship. Instead it turns citizens into wards.”

Mahmood Mamdani, “The New Humanitarian Order,”  
*The Nation* (September 29, 2008).



## Robert Kaplan with reference to the 2008 typhoon in Myanmar

- “If you break it, you own it”!
- Robert Kaplan, “Aid at the Point of a Gun,” **NY Times, Op-Ed**, May 14, 2008.



# Jurisgenerativity

- The law's capacity to create a normative universe of meaning that can often escape the "provenance of formal law-making" (Robert Cover, *Nomos and Narrative*, 1983)



# Human Rights Agreements and Jurisgenerativity

- Law can structure an extra-legal normative universe by developing new vocabularies of public claim-making, by encouraging new forms of subjectivity, and by interjecting power relations with anticipations of justice to come.



# Human Rights and Justiciability

- Basic human rights, although they are based on the moral principle of the communicative freedom of the person, are also rights that require *justiciable form*, i.e. rights that require embodiment and instantiation in a specific legal framework. Human rights straddle that line between morality and justice; they enable us to judge the legitimacy of law.



## The Right to Self-Government and Other Basic Rights

- *My thesis is that without the right to self-government, which is exercised through proper legal and political channels, we cannot justify the range of variation in the content of basic human rights as being legitimate.*



# Democratic Iterations

- Complex processes of **public argument, deliberation** and **exchange** through which universalist rights claims are **contested** and **contextualized, invoked** and **revoked, posited** and **positioned** throughout legal and political institutions as well as in the associations of civil society.



## Human Rights and Democratic Iterations

*Without the right to self-government, which is exercised through proper legal and political channels, we **cannot justify the range of variation in the content of basic human rights as being legitimate.***



# Women Living Under Muslim Law

In the 1980s nine women from Algeria, Sudan, Morocco, Pakistan, Bangladesh, Iran, Mauritius and Tanzania formed an action committee that resulted in ***Women Living Under Muslim Laws (WLUML)***



# Rights Across Borders

- Muslim Arbitration Courts in Ontario, Canada—case in 2003
- Islamic Institute for Civil Justice, opposed by Canadian Council of Women and WLUML
- Defended by “the Christian Legal Fellowship,” the Salvation Army, B’nai Brith, the Sunni Masjid El Noor, and the Ismaili Muslims
- Faith-based tribunals have no legally binding effects



## Conclusion

- The current global system of interdependence is thick enough to trigger significant relations of justice across borders. Such relations are weaker than those within nation states, but certainly stronger than those envisaged in the world picture of sovereigntists.





## Conclusion

- We have entered a new stage in the development of global civil society, in which the relationship between state sovereignty and various human rights regimes generate dangers of increasing interventionism but also paradoxically create spaces for cascading forms of democratic iteration across borders.