

## Ralph Wilde

### **Human Rights Beyond Borders**

I am part way through a ERC-funded project on the extraterritorial application of human rights law, covering civil and political rights and economic, social and cultural rights. The project runs full-time (is my exclusive work) until August 2017.

This project aims to provide a critical evaluation of the law and policy of whether and to what extent human rights law is and should be applicable to extraterritorial state action. It covers war (including the use of so-called 'drones') and occupation as well as the interception of migrants and so called 'pirates' at sea and the detention, interrogation and transfer of individuals, whether terrorist suspects or migrants (including refugees), abroad, addressing such issues as extraordinary rendition, CIA detention facilities, offshore migrant processing. In the economic sphere in particular it includes the right to development and the impact of sanctions on human rights.

There is currently a significant body of existing work on this topic: academic scholarship, case law, and important expert initiatives such as the Maastricht principles. One basic difference with my project is that unlike most other treatments, it aims to cover, comparatively, both economic, social and cultural rights and civil and political rights, and also engage in a more sustained evaluation of the interface with other areas of law such as UN law. But there is a more fundamental difference to my project.

The predominant methodological orientation of existing work by lawyers in this field reflects, to varying degrees, a 'black letter' approach to the law, concerned with seeking to describe what the law means primarily or exclusively from within its own logic and utilizing predominantly legal source materials. Moreover, the underlying normative commitments that inform this analysis, if acknowledged at all, are typically selective and intuitive, and based largely on ideas about underlying policies drawn from the legal cases and other legal texts exclusively, rather than comprehensive and also taking in the body of knowledge of relevant cognate academic disciplines. Sometimes, even, legal scholars ignore broader theory altogether, adopting a 'method' drawn exclusively from the law itself, such as one scholar who asserts as what he calls a 'theoretical' approach the principles of treaty interpretation contained in the Vienna Convention on the Law of Treaties.

Moreover, an overwhelming trend in existing approaches is that the correct response to concerns about extraterritorial activities and uncertainties relating to the legal framework should be, first, to assume that human rights law is beneficial, and, second, to use predominantly legal techniques to cast light into any 'black holes' in legal coverage. Such approaches have produced valuable, sometimes highly sophisticated analyses of the law on its own terms, of especial value in seeking to tease out subtle differences between different treaty provisions, judicial decisions and other legal texts. They were produced when little had been written on the topic, and it was necessary to identify and review the main treaty texts, canonical judicial decisions and other relevant primary materials.

But one cannot appreciate fully what the law means without an informed consideration of the underlying policy preferences embedded in the law—viz, one which connects up such preferences as they are evident in the law with their counterparts in broader theoretical ideas—and what the relevant historical precursors to contemporary international law are. The principles of treaty interpretation in the Vienna Convention, for example, include a consideration of the ‘object and purpose’ of the treaty.

It is possible to analyze this object and purpose utilizing a broader set of methodological approaches than are typically deployed by international lawyers, leading to ideas that are much richer and sophisticated than those arrived at through doctrinal analysis alone. Equally, historians and international relations scholars have identified important connections between the civilizing mission of the colonial era and the post-Second World War shift away from colonialism to ‘development’. Yet on extraterritoriality there is a virtual absence within international law scholarship of any attempt to place the debates about post-World War II human rights law within a broader historical framework when it comes to the question of states behaving humanely, and being obliged to promote development, outside their territories.

What the subject needs now is a more profound consideration of what is at stake, and why all of this ultimately matters, and one which approaches these questions from beyond what is said, if at all, about them in the legal texts themselves: a full-spectrum and methodologically-sound appreciation and application of cognate disciplinary approaches. Similarly, understandings of this area of human rights law would be deepened with the benefit of work on analogous historical precursors, notably debates in the colonial era, where the humanitarians of that time similarly sought to invoke what would now be called human rights standards to ‘humanize’ colonialism in the light of the abuse and exploitation with which colonialism was associated.

This is what I aim to do, applying a range of methodological approaches from cognate disciplines to law, including international relations, forced migration and refugee studies, political theory, including critical theory, economics and development studies, feminist theory, post-colonial theory and international history.

I believe that the combined focus on law, theory—economic, social and political—and history will provide entirely novel ways of thinking about both the subject-matter and the related theoretical and historical ideas from what is offered in existing literature. I aim for this multidisciplinary work to be of interest across a range of fields, notably international relations, international history, economic theory, and political theory.