

Introduction: Human Rights in Politics and Practice

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Reader's Guide

This introduction aims to provide the historical and conceptual background necessary for informed critical engagement with the ideas and arguments presented throughout this book. It begins by considering why human rights have emerged as a particularly powerful and important moral and political discourse since the middle of the twentieth century, stressing their modernity, their invention, and their revolutionary character. It examines the work that human rights do in politics, explaining them as value claims with powerful social, political, and economic implications. Next, it shows why this political character means that human rights play out in complex and divergent ways in practice. This makes human rights difficult to study, as they are inherently multifaceted and necessarily interdisciplinary. This introduction concludes with a brief overview of the aims, structure, and objectives of the book.

Consider the following political events: an authoritarian government silences a critical independent media; rural villagers and the urban poor endure sickness caused by the lack of clean water; criminal networks traffic women and girls for sex; transnational corporations shift manufacturing jobs to low-wage countries with lax labour standards; gay men and women organize to win the right to marry and found families; refugees fleeing tribal or religious violence are denied asylum in nearby wealthy countries; suspected terrorists are captured and detained without trial or review; workers and their allies build a campaign to demand a living wage; reformers organize resistance to a repressive military regime; internationally orchestrated air strikes help to topple a regime that has threatened to massacre its own people; activists successfully work to eliminate school fees and make education available for all. What do such disparate events have in common? It would be difficult to talk about any of them without invoking human rights.

The decades since the **Universal Declaration of Human Rights** (UDHR) was approved by the United Nations General Assembly in 1948 have witnessed what one writer aptly calls 'the rise and rise of human rights'.¹ Human rights have become so pervasive that it is hard to imagine making sense of, or even talking about, the political world without them.

Why Human Rights?

The advancement of human rights to the forefront of global politics has been as remarkable as it has been improbable. The UDHR, an abstract and non-binding collection of noble words and sentiments, has engendered a vast and growing body of international law that is challenging the ideal of sovereignty and transforming relations among states. This transformation includes the creation and development of a diverse array of international institutions concerned with human rights monitoring, compliance, and, increasingly, enforcement. Human rights have inspired domestic and transnational social movements that have toppled repressive regimes and won protection for oppressed and marginalized people; these movements have emerged as powerful political actors in their own right. While the idea of human rights has provoked sometimes sharp controversy, it has nonetheless become the dominant normative or moral discourse of global politics and a major standard of international legitimacy. Why?

Although this text focuses on the post-Second World War era of human rights, understanding the contemporary state of human rights politics and practice requires some sense of their logic and appeal. It would be impossible to summarize the history of human rights here; instead, in the following sections I shall focus on several essential features of human rights that help to explain their emergence and their success, as well as some of the controversies surrounding them. The point of doing so is to provide the historical and conceptual background necessary for informed critical engagement with the ideas and arguments presented throughout this book. Three related features of human rights deserve special emphasis in this respect:

- human rights are distinctively modern;
- human rights are a political invention;
- human rights are inherently revolutionary.

The Modernity of Human Rights

To say that human rights are distinctively modern is not to deny the long history of the values that animate them. Human rights are closely tied historically to notions of justice and human dignity that are as old as human society. To stress the modernity of human rights is rather to stress two important contrasts, one with the corporate conception of rights that dominated medieval Europe and many other pre-modern societies, the other with notions of justice and dignity based in religious cosmology.

Medieval conceptions of rights were anchored in social status. Rights pertained to classes or categories of persons rather than to individuals, and they were strongly supportive of hierarchical notions of social organization. The rights one possessed depended upon and varied with one's status or social position. Rights and duties defined the social roles that constituted society; they were in this sense conservative (norm-preserving) and stabilizing (order-preserving) features of society. Rights were often also anchored in cosmological conceptions or religious views that interpreted the existing social order as divinely orchestrated (or at least sanctioned). That is, the organization of society, including the rights and duties of different groups of people, was seen as reflecting a divine will or plan.

In Western Europe, where the idea of human rights first emerged in its modern form, this way of viewing

society and social organization underwent a profound and sustained transformation beginning as early as the twelfth and thirteenth centuries. The transformation entailed economic development, artistic and literary renaissance, religious reformation, and intellectual flowering. Together, these trends fostered *humanism* (a concern with the achievements and potential of human beings), *rationalism* (an emphasis on reason and science rather than on belief or superstition), and *individualism* (a differentiation of persons from the social groups or classes to which they belong).

My point is not that these are necessary elements of any account of human rights, but rather that these elements shaped the emergence of the particular form of human rights that appeared in early modern Europe. In describing human rights as rights that belong to everyone, they make a powerful statement about human capabilities and potential. They simultaneously assert a far-reaching normative and political programme for protecting and respecting people's ability to exercise those capabilities and realize that potential. In relying on reason in their justification, human rights embody a political logic that transcends—and thus threatens—traditional values and beliefs. Finally, in ascribing rights to everyone, the modern conception of rights challenges conventional understandings of social and political order.

Human Rights as a Political Invention

This radicalism indicates that human rights were less the product of evolution than of invention (see Minogue, 1979). The idea of rights in Europe can be traced back to its origins and meanings in Roman law (Tuck, 1979), but in seventeenth-century England it became a radical and disruptive notion. This development would have horrified one of the key figures responsible for this change, the political philosopher Thomas Hobbes (1588–1679). Hobbes was a devoted monarchist who tried to develop a justification for royal absolutism that would be more persuasive than the divine right of kings, which was increasingly under challenge from theologians and rebellious Parliamentarians. Hobbes's key innovation was to suggest that, in a hypothetical 'state of nature' before the creation of society, all individuals should be considered free and equal. Hobbes believed that this natural freedom and equality would result in chaos and war, to which an all-powerful ruler was the logical and best solution (see Hobbes, 1968 [1651]).

Although Hobbes used freedom and equality to justify absolute authority, others quickly saw the potential to put them to other, very different purposes. The most famous and important of them was the philosopher and Whig revolutionary John Locke (1632–1704). Locke saw that Hobbes's arguments about natural freedom and equality had the potential to justify political revolution by making authority depend on the consent of the governed (Locke, 1960). Locke understood this freedom and equality in terms of natural or human rights enshrined in natural law. Government was established, in Locke's view, to provide means to interpret, judge, and execute this natural law—in other words, to protect rights. When government lacked consent or failed to respect and protect rights, Locke argued, it made itself illegitimate, and the people had the right to replace it.

The Revolutionary Character of Human Rights

Their revolutionary character is the third feature essential for understanding the politics and practice of human rights and the success and controversy they have generated. By the close of the eighteenth century, rights had become a moral standard for assessing the legitimacy of governmental authority and the battle cry of revolutionaries in the United States, France, Haiti, and elsewhere. This revolutionary character is inherent in the logic of human rights themselves. As Carole Pateman (1988, pp. 39–40) has argued, the simple premise of natural freedom and equality undermines justifications for natural authority and subjection: 'the doctrine of natural individual freedom and equality was revolutionary precisely because it swept away, in one fell swoop, all the grounds through which the subordination of some individuals, groups or categories of people to others had been justified'.

This is what Kenneth Minogue (1979, p. 11) meant in describing human rights as the leading edge of the axe of rationalism, which toppled monarchies and cleared the ground for democracy. The great revolutions of the eighteenth and nineteenth centuries marched under the banner of human rights precisely because of the power of this argument against monarchy and aristocracy. Yet these human rights revolutions were at best partial and incomplete. Women, labourers, slaves, and 'natives' in areas subjected to European rule were denied the 'universal' rights that the revolutions themselves proclaimed (see Pateman,

1988; Mills, 1997; Goodhart, 2005). Social, economic, and cultural rights were mostly ignored and often brutally suppressed.

This was as the early proponents of 'the rights of man' had always intended. Their cause was narrowly political and concerned with empowering a small class of landowning gentry chafing under a hereditary monarchy and aristocracy. The logic of consent and natural rights justified their revolution, but in the end it justified much more besides. The logic of human rights extended much further than Locke or his contemporaries could have imagined or endorsed, and over time the axe of rationalism came more to resemble a double-edged sword, as those excluded from enjoyment of their rights used the logic of universality to challenge their subjection and the hypocrisy that supported it. It is this revolutionary potential and emancipatory logic that make human rights particularly appealing to people struggling against domination and oppression and that explain a large part of their 'rise and rise'.

Appeal and Criticisms

Yet the universal aspiration of human rights is itself double-sided. The failure of human rights in practice to live up to their universal promise has been the source of much of the criticism lodged against them, and this criticism has often been justified. It was perfectly obvious for a long time that who qualified as 'human' in most conceptions of human rights was a fairly narrow group of wealthy European males. This criticism has been amplified by the invocation of human rights in justifying all sorts of domination—from colonialism and imperialism to patriarchy, preventive war, and the global neoliberal economic order. Human rights have often been used by elites of various stripes to institutionalize and protect their power and privilege.

Criticism of human rights for failing to live up to their universal promise has often been conflated with another prominent criticism: that their origin in a particular Western cultural and philosophical context makes them an intrinsically Western concept, one at odds with cultural and philosophical traditions elsewhere. This criticism is more suspect. It comes mainly from economic and political elites whose status is threatened by human rights and from Western intellectuals interested in discrediting human rights; the latter presumably aim to head off the misuses of human rights as tools of domination referred to in the

previous paragraph. Whatever the intentions of this latter set of critics, their position winds up supporting autocrats and plutocrats whose abuse of power and privilege the critics would no doubt also condemn. It does so by endorsing the idea that cultures are monolithic and homogeneous and by undermining what is best understood as the global and inclusive nature of human rights claims. This makes it difficult for critics of the status quo in any given society to challenge the hegemonic interpretation of 'culture' invoked by elites; it also makes it difficult for advocates of democracy and social justice to invoke human rights in their fight against domination, oppression, and exploitation.

As a practical matter, people everywhere—not just or even primarily in the West—invoke human rights in their struggles against sexism, racism, poverty, political exclusion, foreign intervention, and so on. Often, in doing so, they link human rights claims to elements of their own cultural, religious, and philosophical traditions—typically elements ignored or repressed by elites. Activists find the logic and power of human rights an invaluable tool for mobilizing and organizing people and for challenging power; this is the case even though these same activists are often among the most eloquent and persuasive critics of partial and prejudicial applications and implementations of human rights.

With respect to the philosophical point regarding the incompatibility of human rights with Indigenous cultural and philosophical traditions, the critics are correct—yet the implications of this fact are quite the opposite of what they imagine. The incompatibility of human rights with traditional cultures and philosophies explains their appeal to those suffering from injustice—as much in the West as elsewhere. It is precisely the point of human rights claims that they disrupt tradition, upend convention, and undercut hierarchy. Human rights provide a critical resource for activists in their struggles against domination and oppression because they supply a different way of thinking about justice, dignity, and respect. To take just one example: it is not as if Western civilization—whatever that means—has historically embraced equality of the sexes; the struggle for women's rights has been a struggle against cultural and philosophical tradition in the West, as it is everywhere.

These arguments reveal the inherently political character of human rights and highlight why attention to context and to power dynamics is essential for understanding the controversy surrounding human

rights wherever they are invoked. This controversy is a reaction to the radical, revolutionary work that human rights do in the world—work that explains why human rights, despite their theoretical baggage and chequered past, remain so appealing and so indispensable in practice.

The Politics of Human Rights

To assert a human right is to make a fundamentally political claim, in two senses. First, it is to make a demand on society, to insist that things be arranged—economically, politically, culturally—so that everyone enjoys equal respect and dignity. This explains why human rights resonate with ancient and global notions of justice and human dignity. Yet human rights are not simply equivalent with human dignity or justice; they represent a certain kind of dignity or justice, one incompatible with domination, oppression, or exploitation. As the images of the axe and the double-edged sword suggest, human rights imply the levelling or cutting down of traditional forms of status and hierarchy. Another way of saying this is that human rights are normative claims. They express a certain set of political convictions and aspirations concerning the freedom and equality of all people. This makes the concept or ideology of human rights incompatible with any system of values that regards some persons as naturally or divinely subordinate to others. This point is vital: when opponents of human rights argue that they clash with traditional values or cultures, they are perfectly correct.

To deny or downplay this clash is to miss what is happening politically when human rights are invoked: power is being challenged, domination contested, authority questioned. The issue is not whether human rights are compatible with existing beliefs and practices around the world; in many instances they are not. The issue is rather whether one endorses the values expressed through human rights or the values underlying beliefs and practices that might conflict with human rights. This points to the second way in which human rights are inherently political claims: the very act of claiming them helps to constitute people as political subjects (Zivi, 2012).

Human rights can also be asserted, as I alluded to earlier, as rhetorical or ideological cover for political choices motivated by other considerations. Examples of such behaviour are familiar: European powers

justified colonial enterprises as ‘civilizing missions’; American politicians cite human rights abuses in launching ‘preemptive’ military attacks and monitoring the private communications of citizens. The rejection of human rights often works in a similar way, as when authoritarian rulers decry human rights as cultural imperialism to secure their grip on power. The important point here is that it is impossible to understand the advantage to be gained from trumpeting or denouncing human rights without understanding what various actors are doing *politically* when they claim or reject them—namely, taking sides.

The Practice of Human Rights

Human rights are inherently political; to embrace or contest them is to take sides on questions of power. I began this introduction by arguing that human rights have in effect become the coin of the realm in global politics, the dominant normative discourse, and a benchmark for legitimate authority. If traditional politics—laws, governments, policies—are the face of that coin, its flip side is the long record of human rights practice that has developed over the past four centuries and accelerated dramatically in recent decades. One can no more understand human rights purely as an abstract moral or political idea than one can understand football by reading the rulebook without watching a match.

This practice is evident in the history of social movements, legal challenges, political argumentation, and public discourse. It represents the real world of human rights, the empirical record of their use by all kinds of people in varied contexts over time. Regardless of what one might think of the philosophical arguments in favour of human rights, there exists this legacy of their actual use and effects in the world that must be reckoned with. Just as it is perfectly possible to be an atheist and still recognize that religion exists and has a real and significant impact on social life, one need not find the moral or philosophical arguments for human rights conclusive or even persuasive to acknowledge that human rights practice is a significant political phenomenon in our world.

How widely or narrowly one reads this history of human rights is itself probably determined in large part by where one’s ideological sympathies lie (for a very broad reading, see Ishay (2004); for a very narrow one, see Moy (2010)). Was the democratic political

revolution that began with seventeenth-century opposition to monarchy and aristocracy a human rights movement? What about the struggles for labourers and for abolition of slavery? Women’s rights? Resistance to colonial rule? One way to answer these questions is by studying the rhetoric and beliefs of the participants. Another is to argue that what the actors said or thought is less important than the thrust and logic of their arguments. Still another is to focus on outcomes, assessing how these movements contributed to the realization of human rights as we understand them today. In making such studies, the history of misuses of human rights cannot be ignored.

Ultimately there is no single or correct way to define the history of human rights practice. How one defines it is never merely an objective decision about ‘the facts’ because the stories we tell reflect our political values and have practical consequences. This is, at least in part, what makes human rights so challenging, so important, and so rewarding to study.

Human Rights as an Object of Enquiry

Human rights are an amazingly rich and complex object of enquiry. Their study involves normative, empirical, and critical approaches and has historical, legal, sociological, anthropological, comparative, and international dimensions.

One complexity in the study of human rights is that they simultaneously demand normative and empirical analysis. Normatively-oriented scholars primarily concern themselves with philosophical and policy questions, while empirically-oriented scholars focus mainly on trying to understand how human rights work in the world. Both are crucially important, and they are much more closely entwined than many scholars seem to realize.

In fact, one of the chief difficulties in the study of human rights is that the normative and the empirical, which are deeply entangled in practice, are usually treated as separate questions. Consider human rights’ status as a global standard of legitimacy. Political theorists might be concerned with the appropriateness of this standard and with what exactly it entails. These normative questions are distinct from, but closely related to, empirical questions about how human rights came to function as a global standard in the first place and how effectively global human rights mechanisms

work. These questions can be answered in part by tracing the history of the laws and institutions that have evolved over time and of the social actors and movements that advocated their development. Trying to understand either the empirical or the normative dimensions of these processes in isolation seems guaranteed to result in partial or distorted understandings. In order to grasp this history and its significance properly, we need to inquire not only about what various actors have done but also about what they thought they were doing; why, politically, they wanted to do it; the resulting norms to which their actions contributed; the identities they helped to create or strengthen; and the effectiveness of their efforts in varied contexts.

Despite these difficulties, some generalizations can be made. **Empirical** studies of human rights, both **qualitative** and **quantitative**, aim to help us understand the reality of human rights politics and practice. These studies might focus on laws, movements, or institutions, or on levels of achievement or violation of human rights standards, trying to uncover the factors that contribute to them. Alternatively, they might seek to trace how the discourse of human rights works to socialize political actors through a combination of pressure and persuasion. Or, they might study the politics of human rights within a particular country or region, trying to explain why certain policies or practices have emerged. They might also focus on how states and other international actors use human rights politically—as a tool of foreign policy, a condition of aid, and so on.

Normative studies of human rights aim to understand the philosophical bases of human rights. They focus on the justifications given for human rights and on the values that human rights claims embody. Normative studies might track the intellectual development of human rights arguments, clarify concepts (such as freedom), or try to justify a particular way of understanding human rights or the obligations they entail. They might also critique (analyse and endorse or criticize) past or present practice on moral grounds (see Table 0.1).

Legal and policy approaches draw on the normative and the empirical. One can study the law from an empirical point of view, emphasizing its content, development, and enforcement, or from a normative perspective, emphasizing its moral character and its interpretation. Similarly, one can try to understand the effects of existing policy or predict the effects of a new policy by relying on empirical analysis, and one

Table 0.1 Human rights as an object of enquiry

	Empirical	Normative
Scope of analysis	What is; the practice of human rights in the world	What ought to be; moral, philosophical, or conceptual questions about human rights
Objects of analysis	Real-world phenomena, e.g. treaties and conventions, institutions, violations, enforcement, social movements, historical records, interviews, opinion surveys, statistical measures	Concepts, e.g. democracy, freedom, obligation, rights Arguments, e.g. freedom requires X; one should do Y if Z applies
Aims of analysis	Description or observation of what is actually going on Explanation of what accounts for the patterns and relationships in our observations or predicts what is likely to occur	Clarification of key concepts and definitions Justification or moral arguments that support human rights Moral critique or critical evaluation of existing laws, policies, and practices using normative standards

can argue for or recommend new policies because of the values they embody or promote.

About this Book

This book attempts to provide a comprehensive introduction to the theory and practice of human rights from the perspective of politics and cognate disciplines. It has three principal aims:

- To introduce students to human rights, both as they are studied by scholars and as they are used in the world.
- To provide detailed treatment of some key issues in contemporary human rights in ways that simultaneously illuminate those issues and illustrate the approaches that various disciplines employ in studying them.
- To stimulate critical thinking about how human rights work and how they might play a role in shaping our future.

The book is divided into two parts that reflect these complementary objectives. Part I comprises eight chapters showcasing the 'state of the art' of the study of human rights in various fields and disciplines. These chapters both introduce the main approaches to the study of human rights as a political phenomenon and survey the

key findings they have yielded. These chapters also highlight the primary challenges and controversies involved in the study of human rights.

Part II encompasses fifteen thematic chapters written to investigate important topics in contemporary human rights politics and practice. Through the use of varied and extensive case studies, these chapters provide fresh insights into important issues while also providing students with clear examples of how scholars undertake research on human rights. The chapters were all purpose-written for this text by an impressive group of international scholars of human rights. The topics covered represent only some of the important themes and issues in the contemporary study and practice of human rights.

The chapters reflect a variety of perspectives on human rights; there has been no attempt to impose a standard definition of human rights, and no ideological litmus test for authors to pass regarding their views on human rights. The chapters also contain significant overlap, with numerous themes, cases, treaties, and institutions being mentioned in several chapters. This diversity and overlap are intentional and serve an important pedagogical purpose, illustrating that there is no one way to understand human rights or to study them. Students can benefit from comparing the views of different authors on refugees, the International Criminal Court, the Responsibility to Protect,

environmental crisis, feminist activism, and many others that appear in several chapters.

In the end, human rights are important not because of the conclusions we reach about them but because of the work that they do in the world.

As you explore this book, you will begin to appreciate how indispensable human rights have become in global politics and to form your own opinions about their value, their limitations, and their potential.



NOTE

1. Kirsten Sellars (2002). *The Rise and Rise of Human Rights*. Stroud, UK: Sutton Publishing.



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Normative and Theoretical Foundations of Human Rights

Anthony J. Langlois

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Reader's Guide

Human rights have come to provide a powerful basis for an ethical critique of international politics and policy. This chapter examines the theoretical basis for the **normative** ideas advanced by those who offer critiques using the language of human rights. It recognizes that the idea of human rights has a philosophical and a political history, a history that emerges out of political liberalism, and one that resonates still in many of the contemporary controversies surrounding the development and use of human rights. The rhetoric of human rights declares the idea to be universal; in this chapter we look at the various ways in which this claim may be interpreted, including the views of cultural relativists and others who deny the universality of human rights. The chapter concludes by emphasizing the way in which the human rights agenda is deeply political: it privileges a certain set of normative commitments that its proponents hope will become, in time, the ethical constitution of the international system.

Introduction

Understanding the history of the human rights idea is essential to understanding the debates and problems that arise when we try to theorize human rights. Despite the rhetoric of human rights—that they are universal, inalienable, inherent, and so on—the contemporary usage of rights is a very recent affair, emergent out of the history of the West. Neither Socrates nor Jesus, neither Confucius nor Buddha, would have claimed—in the face of injustices they experienced—that their universal human rights were being abused. Today, however, the language of human rights has become globally recognized as a response to injustice. The way in which we think about this transition, the emergence and spread of the idea of rights, is important for the way in which we seek to justify and theorize human rights.

The Emergence of Rights Language

Rights language did not appear out of a vacuum, but developed gradually through Western political history, reaching its first golden age in the European **Enlightenment**. Prior to the Enlightenment, social, moral, and political values were spoken of in relation to the right—that is, in relation to an objective moral order that stood over and above all people. This order was conceptualized as the **natural law**, which, after the rise of Christianity, became associated with the Church. Under the natural law, people had duties to one another and to God; rights were derived from the duties we owed one another under God. The practice of claiming modern secular rights, rights that have as their focus the subjective freedoms and liberties of individuals, rather than *objective right* (the divinely sanctioned moral order of the day) is associated with the long development of the idea of individual liberty, culminating in the Enlightenment.

The rights claimed in the Enlightenment made sense to the people of that period because they had been preceded by the development of specific conceptions of society, individuality, freedom, liberty, government, and religion. These conceptions laid the groundwork for human rights—or, as they were called at the time, the **rights of man**. As these subversive ideas gained critical influence, they began to appear in the political documents known as rights declarations.

These documents, the most important of which were drafted in the final decades of the 1700s, are the early rhetorical and legal masterpieces of rights politics (Fields, 2003, p. 22). They were created under the influence of both a long chain of political events and the intellectual ferment of the Enlightenment. The former included crucial historical events such as the illegal and confused but fabulously daring trial of King Charles I of England, in 1649 (Kamenka, 1978). With this trial, the English monarch's rights were made a function of the rights of the people. These same rights were to be discussed and promoted by a host of Enlightenment *philosophes* over the ensuing 130 years. Despite their differences with one another, these thinkers demanded individual freedom from absolutist control.

The Revolutionary Uses of Human Rights

It was this demand for freedom that led American colonists to revolt against their British masters, a revolt that led to the creation of the first grand document of the 'age of rights': the US Declaration of Independence of 1776 (see Box 1.1). While not the first American rights document (there had been a Bill of Rights in 1774 in the First Continental Congress; and the state of Virginia also declared a Bill of Rights on 12 June 1776), the Declaration of Independence penned by Thomas Jefferson (1743–1826) gave poetic and radical voice to the claim that all men (*sic*) should be free to live independently and with equality (Lauren, 1998, p. 17). Jefferson argued that people are entitled to a bill of rights to guard their freedoms against all governments. Americans subsequently gained these entitlements through the US Constitution (1789) and its first ten amendments, which constitute the Bill of Rights (1791).

In France, too, revolution against a despotic monarch and regime led to the creation of that other grand rights document: The Declaration of the Rights of Man and of the Citizen (1789; see Box 1.1). The French were inspired by the Americans—indeed, key French citizens had fought in the American Revolutionary War—and they sought to secure rights, not just for their countrymen, but for everyone: '*all men are born free and equal in rights*' (Article 1, emphasis added).

These Declarations encapsulate what we now call liberal democracy. They do not merely set out an

BOX 1.1 REVOLUTIONARY STATEMENTS OF HUMAN RIGHTS

From the United States Declaration of Independence (1776)

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness ... That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed ... That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

From the French Declaration of the Rights of Man and of the Citizen (1789)

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public

calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Article 1: Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

Article 2: The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

action plan for short-term political goals; rather, they articulate a philosophical account of what it means to have legitimate government (Kamenka, 1978). Central to this is an egalitarian philosophy of what it means to be human.

Philosophical Questions

The political consequences of these rights declarations continue to escalate today. But ever since these rights were first advanced they have been dogged by philosophical questioning. Natural and imprescriptible rights had their critics; and even those who wished to embrace such rights had questions.

Philosophical Foundations

The difficulty concerned the underlying philosophy from which the notion of rights was derived. The rights described in the Declarations are moral ideas known as **natural rights**, derived from the natural law, which in Christian civilization had to do with the moral character given by God to his creation. This is very clear, for example, when one reads the work of John Locke (1632–1704), who laid the foundation for much of the subsequent enthusiasm about rights. However,

the period in which the early rights theorizing occurred was also the period in which Christian theism gradually lost its hold on the allegiance of the *philosophes*. The reason of man came to replace the word of God as the highest authority, fracturing the logic of natural law and duty that lay behind the Christian natural rights framework (Waldron, 1987). New theories were developed—by Hugo Grotius (1583–1645) and Thomas Hobbes (1588–1679), for example—that sought to derive rights, not from the natural law (ordained by God), but from our basic humanity. These theories were for a time quelled by powerful restatements of natural law theories (such as Samuel Pufendorf's (1632–94)). Nonetheless they added force to the general cultural shift under way during this period. This shift would over time highlight the moral autonomy of the individual, undermine the derivative natural law–duty–rights structure of political morality, and focus the popular imagination on the idea of basic, inalienable rights. These rights would come to be understood as natural rights that could be derived from our natural humanity, rather than from God's natural law (Haakonssen, 1991, p. 61). Over time, the natural rights idea became more and more politically efficacious; it also became more philosophically tenuous. If natural rights were no longer justified by direct

appeal to God via the natural law, how were they to be justified? Nature by itself evinced a bewildering array of values, with no consensus about which were the correct ones. It seemed that the fate of natural rights was to be a political idea that came too late to be awarded philosophical respectability (Waldron, 1987, p. 13).

Early Critics of Rights

By the time of the Rights Declarations, key philosophers were forcefully attacking the idea of natural rights. These attacks came from across the philosophical spectrum—from **conservatives**, **liberals** (particularly **utilitarians**), and **socialists** (see Box 1.2).

Conservatives are most famously represented by Edmund Burke (1729–97), author of *Reflections on the Revolution in France* (Burke, 1971); here, the French Declaration of the Rights of Man and of the Citizen is

denounced in strong terms. Burke's denunciation concerned the basis on which people were thought to have rights. He did not reject rights as such, but rejected the idea that rights were natural, that they existed as an 'Archimedean point' outside society by which government could be judged. Such abstractions were wrong-headed, he argued. Rather, man had rights because of the organic traditions and institutions of his society. Rights were the rights of *Englishmen* or *Frenchmen*, not of *man*. Different political communities may construct different rights, he argued. The attempt to impose one list of abstract rights on all men would issue in the breakdown of social bonds, the eruption of chaos, and eventually tyranny—expectations that for Burke were vindicated by subsequent events in France.

Liberals, in the form of utilitarians, also attacked natural rights. Jeremy Bentham (1748–1832) declared in 'Anarchical Fallacies' (Bentham, 1843): 'Natural rights is simple nonsense: natural and imprescriptible

BOX 1.2 THE PHILOSOPHERS ON THE RIGHTS OF MAN

Bentham (1748–1832)

How stands the truth of things? That there are no such things as natural rights—no such things as rights anterior to the establishment of government—no such things as natural rights opposed to, in contradistinction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning it leads to error; and to that sort of error that leads to mischief—to the extremity of mischief. ('Anarchical Fallacies', see Bentham (1843))

Burke (1729–97)

As to the share of power, authority, and direction which each individual ought to have in the management of the state, that I must deny to be amongst the direct original right of man in civil society; for I have in my contemplation the civil social man, and no other. It is a thing to be settled by convention. (*Reflections on the Revolution in France*, see Burke (1971))

Marx (1818–83)

Thus none of the so-called rights of man goes beyond egoistic man, man as he is in civil society, namely an individual withdrawn behind his private interests and whims and separated from the community. Far from the rights of man conceiving of man as a species-being ... The only bond that holds them together is natural necessity, need and private interest, the conservation of

their property and egoistic person. ('On "the Jewish Question"', see Marx (1987))

Hobbes (1588–1679)

The Right of Nature ... is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto. (*Leviathan*, see Hobbes (1968))

Locke (1632–1704)

Men being ... by nature all free, equal, and independent, no one can be put out of his estate and subjected to the political power of another without his consent. (*The Second Treatise of Government*, see Locke (1952))

Kant (1724–1804)

So act that the maxim of your will can at the same time be a universal law ... Treat all humans as ends in themselves rather than as mere means ... Conduct yourself as a member of a kingdom of ends. (*Groundwork for the Metaphysics of Morals*, see Kant (2002))

(Edmundson, 2004)

rights, rhetorical nonsense—nonsense upon stilts.’ Natural rights were ‘unreal metaphysical phenomena’, unreal rights that stemmed from an unreal law, the natural law, which itself was dismissed due to the absence of a divine lawgiver. If one wanted to advance liberal democracy, one should speak of the reform of actual rights and laws—positive rights and laws—not fanciful ones.

Radicals criticized the rights of man for being the rights of bourgeois man. Rights to liberty, property, and personal security gave the entrepreneur a relatively free hand in his capitalist occupations. The economic well-being of the masses would remain of little concern. Karl Marx’s (1818–83) passion was the emancipation of the **proletariat** or wage workers, to be achieved via revolution with the backing of rigorous science. In practice, rights were part of the general capitalist system of domination that stood in the way of the achievement of equality and well-being for all human persons.

The great irony of the rights revolution, then, is that, just when the language of natural rights became extraordinarily efficacious in dealing with social and political issues, the main currents of political and philosophical thought became ambivalent about the idea (Langlois, 2001, Chapter 3).

KEY POINTS

The foundation for rights is a puzzling philosophical question.

The early natural law foundation for rights became vulnerable during the Enlightenment because of the decline of Christian theism.

At the same time the idea of rights became more politically effective.

Conservatives, liberals, and radicals all criticized the idea of natural rights.

Critical Thinking Question:

Which criticisms of natural rights do you find important? Why?

Modern Human Rights

This was all changed by the Second World War (1939–45). The horror of total war and, in particular, the atrocities of the Jewish Holocaust ‘outraged

the conscience of mankind’—to cite the language of the UN’s **Universal Declaration of Human Rights** (UDHR; see Box 1.3). In moral shock, the response of the collective Western social imagination was to return to the natural law. Members of the Nazi leadership were charged and tried at the **Nuremberg Tribunal** (1945–9), under the auspices of the natural law, with **crimes against humanity**. This charge was not extant in any formal international document or law, but was one that, so it would be held, was patently clear and known to any reasonable person *because* it was a part of the natural law. The point here—one to which we shall return—is that positive law, be it domestic or international, is held to account by a higher moral standard. Natural law, then, was invoked as the legal basis for the indictments against the Nazis and as the moral foundation for liberal democracy and human rights.

Human rights standards were placed centrally in the United Nations Charter (1945), and in 1948 the UN promulgated its Universal Declaration. The UDHR has a preamble and thirty articles, the first of which declares that ‘all human beings are born free and equal in dignity and rights’. A quick perusal of the Declaration is sufficient for the reader to recognize all the main elements of liberal political theory: the emphasis on freedom and liberty, dignity, and equality; the importance of the rule of law, freedom from slavery and torture, and the presumption of innocence; the ownership of private property, freedom of religion

BOX 1.3 FROM THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

Now, Therefore The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

and expression, and the right to take part in the government of one’s country (liberty rights); and, more controversially, rights to adequate standards of living, education, and cultural participation (welfare rights).

This modern account of human rights contains philosophical tensions. The whole underlying *structure* of the human rights idea is linked to ideas of natural law and natural right that, as we have seen, are philosophically problematic. The *content* of the new human rights represented a very specific philosophical account of human society: that of liberal political thought. Thus, the new universal human rights were highly *particularistic*: they emerged out of Western philosophy and politics, and they embodied a distinct ideological position. The sense in which these ideas are universal has neither to do with their history (which is one thread in the larger history of the West) nor with any form of global **empirical** reality (modern human rights are not found indigenously occurring in all human societies). Instead, the universality of these rights derived from their proponents’ belief that human sociability *should* be articulated (at least in part) by the use of rights language, and that these particular rights *should* be the moral norms by which human behaviour is judged and evaluated.

The Moral Basis of Human Rights

We see, then, that for proponents, human rights are viewed as a set of moral demands, demands that should be institutionalized in our corporate political life—within states and internationally. How is it that these moral demands are justified? The UDHR powerfully articulates the moral urgency that energized the world after the Second World War. Crucially, however, the UN document makes no attempt at explanation, justification, or philosophical defence. This was a deliberate strategy. The Human Rights Commission, the body given the responsibility to draft the UDHR, was well aware of the differences that would have to be managed. Its strategy was to focus on norms or rules, leaving aside questions of justification (Morsink, 2000).

Much has been written in the years since the UDHR’s promulgation about how to reconcile the specificity of the political and moral claims made in the name of human rights with the multiplicity of human ethical, religious, philosophical, cultural, and social traditions. The dilemma is this: the UDHR engages a universalist rhetoric to present a particular

position, that of the liberal rights tradition. This position is *normatively* universal, to be sure; but it is not shared universally by all human persons, and the traditions and communities in which they live.

Much of the subsequent controversy associated with arguments about universalism and relativism has been complicated by the failure of rights proponents either to be clear about or to properly understand the liberal nature of the political project in which they are involved. In the same way that believers in natural law and rights often claimed that these ideas were self-evident, so too, for many believers in human rights, the liberal values that they articulate are held to be universal, values of the common human sense. But, in fact, they are not common or universal, despite the desire of many that they be so. And it is this that makes the philosophical justification of human rights so important: the proponents of human rights need to have good reasons with which to defend human rights, and by which to attempt to persuade others to support human rights.

One might argue that the difficult task of philosophical justification has been superseded by the creation of the international human rights regime. It may be observed that we have had almost seventy years of the development and implementation of human rights law, both domestically within states and internationally; that human rights have ‘worldwide acceptance’ and ‘global legitimacy’; that, by signing on to the UN Charter, the UDHR, and subsequent human rights instruments, states have ceded some measure of their sovereignty and may legitimately and legally be held accountable for their behaviour in relation to human rights standards. It may be argued: given that the political philosophers were unable to persuade the world of the veracity of rights before the Second World War, perhaps the defence of human rights is rightly given to the international lawyers and diplomats who have made such progress in expanding the remit of human rights in the decades since. We have human rights now, and they are protected because of the laws and institutions these people established and maintained.

The technical description of this approach is ‘the argument from **legal positivism**’ (Langlois, 2004). The main fault in the argument is that it risks equating or *reducing* human rights to legal rights. The potential danger in this approach is clear: it would mean that human rights *only* exist where there are actual laws or agreements or institutions that say they exist.

Take these away, and you no longer have human rights. Clearly this is a perilous doctrine, one that runs against the thrust of the human rights movement. The historical development of human rights has depended on the conviction that rights exist as *moral demands* that need to be translated into legal and institutional contexts in order to be effectively protected and policed. These moral demands stand behind any laws, agreements, or institutions, and are the impetus for the creation of such. The ability to claim or argue for rights is often most important to us when we *do not* in fact have a well-functioning legal and institutional context by which to claim them—what Jack Donnelly (1989) terms the ‘possession paradox’ (see Box 1.4). This ability is dependent upon people being able to understand and identify with certain moral requirements—one of the goals of philosophical justification.

The Philosophical Justification of Modern Human Rights

We have seen that the idea of human rights emerged out of the political history of the West and, in particular, out of liberal political theory. There are many varieties of liberalism, but they are all fundamentally linked by their regard for the individual human subject. In Immanuel Kant’s (1724–1804) phrase, individuals are always to be regarded as ends, not means. All individuals are to be considered of equal moral worth

and standing. But exactly how this is understood varies between different proponents of liberalism.

The basic dignity of the human person has often been argued to ground rights, and in the Western tradition, a principal historical source for this idea of human dignity was the Christian idea that man was made in the image of God—in the *imago dei*. More commonly today, however, liberal approaches stress human characteristics rather than divine ones. So, for example, the human capacity for rationally purposive agency is determined to be the distinguishing characteristic of human beings; this in turn becomes the basis for a fuller doctrine of human rights (see Gewirth, 1996). Or, similarly, autonomy and choice are taken to be fundamental ingredients in any valuable life, and rights are derived from the conditions—the liberties and freedoms—that are needed in order to sustain such a life (see Raz, 1986).

Another way of deriving rights is through the idea of political equality: the idea that each individual has equal moral worth and should be accorded this by equal respect in a political community’s political processes (see Dworkin, 1977). This political equality is sometimes linked to our equal basic needs: the most obvious ones having to do with security and subsistence (see Shue, 1980). Alternatively, it can be linked to our capabilities, which are future-oriented: directed to the requirements for a life of full dignity (see Sen, 1999a; Nussbaum, 2000b). Pragmatic approaches, on the other hand, are reluctant to be too specific about a particular foundation for human rights, focusing instead on areas of consensus among diverse people, and using this agreement as the basis for legitimating rights (see Rawls, 1971, 1993, 1999).

The Universalism of Human Rights

The UDHR’s claim to have *universal* application is commonly challenged in one of two related ways (Freeman, 2002, Chapter 6). The first is the argument from **cultural relativism**, a conceptual rejection of rights which states that norms are only appropriate for the cultures out of which they emerge, and that therefore the norms of human rights emergent out of the West only apply in the West. Related to this is the argument from **imperialism**, which—often using cultural relativism as a supporting argument—states that, far from being about the protection of all people everywhere, human rights is a political tool which has been used to promote and defend Western interests. The argument

from imperialism suggests that the ‘truths’ of human rights are disguised forms of power, part of a complex system of global political manipulation.

Cultural Relativism

The cultural relativist often criticizes the human rights doctrine for failing to respect different cultural, religious, and philosophical traditions, and therefore, ultimately, for failing to respect or recognize peoples’ identities. **Tolerance** and respect are the key values here; the irony is supposed to be that liberals, in the form of human rights proponents, are being *illiberal* by expecting everyone else to become liberals (see Box 1.5 for further discussion of liberalism and human rights). However, this is an inconsistent use of the cultural relativist argument, precisely because it is not relative *enough*.

A consistent relativist is refuted by her own doctrine: by claiming that all truths are relative, she proclaims the relativism of her own truths, and the incoherence of her position. A consistent relativist cannot prioritize any values at all. A relativist has no basis on which to hold that tolerance or respect are *universal* values which can be used to discredit the supposed interference of specific liberal values (note the double irony that tolerance and respect, along with an appreciation

of pluralism, are liberal values anyway: the so-called relativist may simply be a confused liberal). All that a consistent cultural relativist can do in politics is to note that people have different values: the relativist has no basis for ordering or prioritizing these values, and is thus reduced to political quietism and irrelevance.

A quite common source of this inconsistency is a failure to differentiate between the theoretical claims of cultural relativism, and the empirical fact of cultural relativity. The former undermines any attempt to establish a basis for universal human rights; the latter simply recognizes that people (as individuals and groups) are different from one another. What one does with this recognition will depend entirely on one’s broader philosophical approach.

Human Rights Imperialism

A similar confusion is played out by those who charge human rights universalists with being imperialistic. Ironically, the anti-imperialism of the human rights challengers must also appeal to a universal principle—a universal principle of anti-imperialism. This principle must either be a principle of freedom, a principle of tolerance, or a principle of equality. It would suggest that people should be free to believe what they like or belong to whichever culture they like; or, people

BOX 1.5 DECONSTRUCTING THE LIBERALISM OF HUMAN RIGHTS

Many people who are enthusiastic about the value of human rights, and who recognize their historical connections with liberalism, nonetheless question whether liberalism is an adequate or desirable basis for a global and universal human rights movement. Various possible forms of critique include the following:

- Many theorists argue that the key concepts liberals use to ground human rights (agency, choice, freedom, etc.) are not sufficient to capture what is intended by the use of the term *human in human rights*. Liberalism’s philosophical focus is argued to be too narrow.
- Communitarian thinkers across a range of traditions argue that liberalism’s attempts to abstract the human person from their community or tradition undermines key features of what it means to be human and to pursue specific visions of the good life.
- Radical philosophers argue that liberalism is compromised by its own constitutive inequalities, those engendered by

its development out of imperial and racially discriminatory political orders. Liberalism’s claim to promote a just world of equal rights is undermined by both its historical and continued investment in a global world order that is deeply inequalitarian and unequal.

- Critical theorists often go beyond liberalism’s face value claims and focus on philosophical ambiguities, unexpected consequences, social outcomes, and the tensions within and between human rights claims and practices. These explorations often challenge naïve beliefs in human rights claims.
- Queer thinkers examine the ways in which gender and sexuality upset conventional liberal categories of identity and politics; queer thinkers show how unstable many of liberalism’s claims are and delight in upsetting the power relationships normalized by these claims.

References: Benhabib, 2011; Holder and Reidy, 2013; Douzinas and Gearty, 2014; Lutz-Bachmann and Nascimento, 2014; Picq and Thiel, 2015

BOX 1.4 THE POSSESSION PARADOX

‘Having’ a right is ... of most value precisely when one does not ‘have’ the object of the right—that is, when one is denied direct, objective enjoyment of the right. I call this ‘the possession paradox’ of rights: ‘having’ and ‘not having’ a right at the same time, the ‘having’ being particularly important precisely when one does not ‘have’ it. This possession paradox is characteristic of all rights ... We must distinguish between possession of a right, the respect it receives and the ease or frequency of enforcement ... It is the ability to claim the right if necessary—the special force this gives to the demand and the special social practices it brings into play—that makes having rights so valuable and that distinguishes having a right from simply enjoying the benefit of being the (right-less) beneficiary of someone else’s obligation.

(Donnelly, 1989, pp. 11–12)

should tolerate the differences of others and respect their right to be different; or, people should regard other people's capacity to belong to a culture and to have beliefs as equal to their own such capacity. In any of these cases, the argument of the cultural imperialists seems to reduce to an argument along these lines: 'we *do not* agree with you imposing your will on us, because we *do* agree with you that we have certain rights to liberty of action and belief'. The anti-imperialist's argument, like that of the confused relativist's, seems to be a form of nascent liberalism.

There is a crucial question which must be addressed to political leaders who engage in the human rights challenging rhetoric of anti-imperialism: are the cultural beliefs and practices which they defend using the rhetoric of anti-imperialism consistent with the principles that are logically required to frame that anti-imperialism? In all too many of the political disputes over human rights in international politics, those taking the anti-imperialist line against human rights fail to apply the principles which support their anti-imperialism *within* the jurisdictions over which they have authority. Strongman authoritarian leaders argue against human rights on the basis of universal principles that give state leaders freedom, autonomy, and equal respect in the community of sovereign states, and then impose policies which deprive their citizens of that same freedom, tolerance, and equality within the domestic polity. Or, similarly, religious leaders demand freedom of belief, tolerance, and equal treatment for their religious values and practices—and then proceed to deny freedom, tolerance, and equal treatment to members of their communities who may have minority or dissenting opinions. The anti-imperialist rhetoric is useful for drawing our attention to the universal principles we use to frame our responses to injustice; however, rather than succeeding as a critique of the liberalism which grounds human rights, this rhetoric's failures and inconsistencies serve to further support human rights themselves as safeguards against imperialism.

Human rights have become institutionalized globally. The political leaders, officials, and organizational bodies of the movement have become powerful in their own right; that power can easily be misused and employed as a tool of domination. While the anti-imperialist and cultural relativist arguments are often invoked to challenge such domination, the above discussion suggests that the challenge comes more consistently from within human rights norms themselves—norms which privilege equality and freedom and warn against domination

and arbitrary power. The theory of human rights stands as an important corrective to any abuse in the implementation or practice of human rights.

KEY POINTS

The Second World War was the catalyst for the modern redeployment of the idea of the rights of man, now called human rights.

The United Nation's Universal Declaration of Human Rights was promulgated in 1948.

While the rights in the new Declaration emerge out of the liberal political tradition, no philosophical justification is formally given for the rights declared because of the variability of human belief systems. Individuals and groups are left to expound their own justifications for the rights in the Declaration.

Moral justifications for human rights have been presented on the following grounds: human dignity, our ability to reason, the autonomy of individuals, the equality of all persons, our common needs, the capabilities of the human person, and the consensus of diverse parties on key beliefs.

Cultural relativists criticize human rights for illegitimately privileging one set of values over others; rights defenders respond that it is the relativists whose views are inconsistent and that there are very good reasons for privileging rights values.

Human rights are criticized for being the exercise of an imperialist politics; however, those who make this argument are shown to be inconsistent and not genuinely concerned with protecting the victims of authoritarian rule.

Critical Thinking Question:

Which justification for human rights do you find attractive? How would you defend it against those who claim that it wrongly privileges one set of values over others?

Types of Human Rights: Liberty and Welfare Rights

Human rights today have three core texts, The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These texts collectively make up the International Bill of Human Rights. The two covenants are human rights treaties which operationalize the Universal Declaration of Human

Rights—they adumbrate what are often seen to be the two different forms of rights within the UDHR, articulating them more fully, and in a manner that responded to the necessities of international politics and the emerging machinery of human rights in the United Nations. For our purposes, what is interesting about the two covenants is the way in which they have come to represent a series of debates regarding the political and normative nature of human rights.

Civil and political rights are often seen to be the core rights at the heart of the tradition of political rights talk and practice, especially as it emerged in Europe and the United States of America in the eighteenth century. Rights such as freedom of speech, freedom from slavery, freedom of religion, and equality before the law are paradigmatic examples. By contrast, many of the rights set out in the International Covenant on Economic, Social and Cultural Rights are seen to fall into a different class: it has often been argued that whereas the rights of the ICCPR are the core and basic rights of the liberal tradition ('liberty rights'), those of the ICESCR are aspirations and goals that we collectively share regarding the good human life well lived ('welfare rights'). These rights include, among others, just and favourable conditions of work, an adequate standard of living, education, healthcare, and participation in cultural life.

Embedded within this debate are historical, ideological, political, normative, and philosophical differences regarding what political ideas can legitimately be promoted by the use of 'rights language'. Here we will examine one of the key fault lines in this debate, which has often been thought to usefully connect all of these differences.

The Negative/Positive Distinction

The classic fault line in the theorization of types of human rights is that described by the negative/positive distinction, a distinction that refers to the normative and philosophical character of the rights in question. On this schema, civil and political rights are considered to be 'negative rights' and economic, social, and cultural rights are considered to be 'positive rights' (see also Box 1.6). What do these terms mean?

The idea behind negative rights is that they only require governments to *refrain* from doing things. In order for a person to have the right to freedom of association, so the argument might go, a government merely needs

BOX 1.6 CHALLENGING ASSUMPTIONS: NEGATIVE AND POSITIVE RIGHTS

Negative rights are commonly thought of as rights of non-interference; positive rights as activity-based. On this basis, for me to have free speech I just need to be let alone to do my speaking; but to have my right to education, someone will need to do a lot of work to build the school and train the teachers. However, if we think closely about free speech and education as rights—not just as activities we undertake—then both need theoretical and material supports which erase this allegedly clear negative/positive distinction. Free speech as a guaranteed right requires positive support from the state in the same way that education does: an institutional system which sets out the right and has the material means to protect it when it is infringed. Creating and insuring the social and institutional space for people to speak freely; it turns out, involves the same sorts of active investment as does the provision of education as a right.

to refrain from obstructing them. By contrast, a positive right requires a government to do a considerable amount: a right to healthcare provision requires (at the least) a government to have some mechanism to connect you with a doctor when you are ill.

Another key element of the distinction is that negative rights are said to be immediately implementable, whereas positive rights require progressive realization. So, for example, if you are in a society where there is no freedom of speech, this can be changed in an instant by a government simply repealing all the measures it had in place to limit that freedom, thus allowing people to say, write, and print what they like as they please. However, access to a reasonable standard of living is not a right that a government can procure for its citizens simply by government decree; in impoverished societies this right might only be met after years of sustained development, even under the best of possible circumstances.

A further argument would be that positive rights are not justiciable in the manner of negative rights; that is, one cannot settle who has responsibility for the satisfaction of a given right in the same manner. Let us take the case of civil and political rights: if I am deprived of my freedom of religion, tortured, or am not treated equally before the law, it is a relatively straightforward matter for a court to determine who is to blame, and who is responsible to do something about it. The abuse of my rights has a justiciable remedy. If I live in an underdeveloped society with little access to

food, healthcare, work, or education, the question of who is responsible for this situation and who should remedy it are much more difficult indeed; many have argued that the matter is so complex that it cannot be thought justiciable.

The Indivisibility of Rights

Further investigation reveals, however, that this now classic distinction goes both too far and not far enough in the manner in which it distinguishes between the different types of rights and the circumstances under which they might be attained. Let us briefly see why, before going on to suggest a better approach.

If we go back to our earlier examples we can see on second glance that we need a more sophisticated analysis. Freedom of association may be experienced by a person when a government simply refrains from activity. However, in order for you to enjoy your freedom as a right, there needs to be an institutional structure in place for you to utilize should an arm of government (or some other agent) seek to infringe your right. If a policeman were to detain you wrongly, you need courts, lawyers, statutes, and other state apparatus to exist and to be at your disposal in order to claim your right. It turns out that there is much the state must do in order to ensure your negative rights. Similarly with freedom of speech: a government can grant you freedom of speech as a right if it is the case that all such rights granting and protecting mechanisms are already in place. If they are not in place, they will take time to be established and become operational. 'Negative' rights need positive government action in order to be granted, protected, and to be justiciable. 'Positive' rights to healthcare or education and so on operate in a similar way: in societies where these rights are institutionalized, they are similarly justiciable. In societies where levels of development mitigate against institutionalization, it may well be the case that the right to freedom of the press and the right to healthcare both face the same structural difficulties.

Recognizing this, scholars have moved on to develop more sophisticated typologies of rights, which allow for differentiation between rights that need more or less activity in order to be met, and that have varying normative character (Koch, 2009). Henry Shue (1980) wrote of the obligation to avoid depriving, to protect from deprivation, and to aid the deprived. Asbjorn Eide (1989) formulated obligations to respect, protect, facilitate, and fulfil. Others created similar scales.

Collectively they reinforce Eide's key point: that 'each and every human right—economic, social, cultural, civil and political—may require various measures from (passive) non-interference to (active) insurance of the satisfaction of individual needs all depending on the concrete circumstances'. (Quoted in Koch, 2009, p. 15.)

Such a conclusion suggests that while not all human rights are the same, there is a strong sense in which they are 'indivisible, interdependent and inter-related', to use the rhetoric of the Vienna Declaration and Programme of Action, 1993. The Declaration goes on to say that 'The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis ...'. It is evidently the case that this latter set of injunctions is not followed; one of the reasons for hope and evidences of progress in human rights protection over recent decades, however, has been the reclaimed understanding that the various types of human rights—civil, political, economic, social, cultural—are not easily divorced from one another, and that the practical and institutional realization of any one set of these rights has follow-on effects for the broader political objective articulated by the Vienna Declaration.

KEY POINTS

The Universal Declaration and other UN Human Rights instrumentalities contain both liberty rights and welfare rights.

The difference between these two types of rights has often been mapped out using the classic negative/positive distinction.

Negative rights are said to require only passive non-interference to be realized, whereas positive rights need to be actively pursued by state or intergovernmental agents.

Closer inspection reveals this to be a false dichotomy, with both liberty and welfare rights needing complex combinations of respect, protection, facilitation, and fulfilment by a range of different actors.

This analysis reinforces a repeated theme in the history of modern human rights, that they should be understood as indivisible, interdependent, and interrelated.

Critical Thinking Question:

Why is it important to recognize that both liberty and welfare rights require institutions and state action to be realized?

Group Rights

Many of the rights that have been developed within the contemporary human rights project have a collective or group dimension. The two UN Covenants discussed in the previous section ascribe certain rights to all 'peoples'—most famously the right to self-determination. As well as the liberty and welfare rights already discussed, which are conventionally understood as individual rights, the evolution of modern human rights has seen the development of 'solidarity rights'. These group or collectively oriented rights are 'to goods such as development, peace, a healthy environment, communication, humanitarian assistance, and a share in the common heritage of mankind' (P. Jones, 2008b).

Human rights theorists have been significantly divided over how to understand such rights. Some theorists have argued that while we can talk of groups having rights under certain conditions, these rights cannot be understood as human rights. Human rights understood as the rights of individuals remain the only 'real rights', because of the role they play in protecting individuals from the interests, intentions, and 'rights' of hostile groups. Others will point to the solidarity rights listed above and argue that many of the goods that we discuss under the rubric of human rights are experienced collectively—that, indeed, many of the abuses of human rights we fight against have collective as well as individual dimensions. This line of argument is often extended to include a broader debate about culture, and has particular resonance for those working with human

rights in post-colonial and other non-Western contexts. Another related complication involves how we think about minority rights (see Box 1.7). Thus, the discussion of group rights provides a clear entrée into discussions of cultural difference and its significance for understanding human rights.

A most useful way of understanding the terms of the debate is provided by the analysis of Peter Jones (P. Jones, 1999a, 1999b, 2008a, 2008b). Jones identifies two different conceptions of group rights that are used in the discussion: the *collective conception* and the *corporate conception* of group rights. He argues that the distinction 'is crucial to the issue of whether group rights are in sympathy with, and perhaps form part of, the morality of human rights, or whether they belong to a quite different and potentially conflicting morality'. (P. Jones, 1999b, p. 107.)

The Collective Conception of Group Rights

To best understand what it means to have a group right on the collective conception, let us first go back one step and ask what it means to have a right in the first place. Jones answers this with the aid of an 'interest theory of rights' (drawn from Raz, 1986). In this theory, we have a right to something if we have an interest in that something—not any kind of interest though; it has to be an interest of 'sufficient moment'. This sufficiently important interest provides a justification for us to impose a duty on another person. Using this interest theory of rights, we can see how it might be that we can talk sensibly of group rights: people who

BOX 1.7 MINORITY RIGHTS

Minority rights are similar to group rights, in that they apply to a subset of group-differentiated people: the rights of women or the rights of native language speakers for example. Two features of minority rights make them appropriate for positioning within the family of human rights. First, they are rights which apply to individuals who have a minority status of some form; this is a feature they share with the collective conception of group rights. Second, minority rights may be thought of as human rights because they are what James W. Nickel terms 'URAMs': universal rights applied to minorities. On close examination, minority rights turn out to be the application of universal rights to the specific needs or vulnerabilities of minority populations. As Nickel argues, even strongly differentiated minority rights can

be instances of universal rights applied to minorities. An example he uses here is the right of women to prenatal care. This appears to be a right men can't share, one that does not apply to all persons, and therefore one that is not a human right, properly understood. However, the right to prenatal care can be understood as an instance of the universal human right to basic medical care, in its specific application to pregnant women. It is a sub-specification of a universal human right. Nickel concludes that minority rights can be understood as human rights in cases where they can be shown to derive from such a broader universal right.

Reference: Nickel, 2007, Chapter 10

belong to a group might have a shared interest which as an individual is not very strong, but when shared with others is of sufficient moment to be considered a right and thus to ground duties which other persons or groups may be obliged to discharge.

Jones uses a couple of examples to illustrate how this works: one involves the interests of people living in the vicinity of a polluting factory, and one involves people who belong to a cultural minority group. The individuals alone in these examples may not have a sufficiently strong interest to oblige others to change their behaviour—whether that is to stop polluting or to extend consideration to certain aspects of their cultural identity (language use, for example). However, the combined interests of people who come together to form a group may well provide the strength of justification necessary.

For our purposes, the crucial points are these: the group comes into play through the aggregation of the shared interests of its separate members; the group's moral standing is derived from that of its members and their interests and does not exist separately; and, finally, the group's import is that it provides a right that may not exist without the sharing of interests that it facilitates. On this conception, we can indeed speak of group rights, but these rights depend on and advert to the interests of the individuals who collectively form the group.

The Corporate Conception of Group Rights

In the corporate conception, the idea of 'groupness' is different from what we have just discussed. Rather than the group being made up of a collection of individuals with shared interests, the group itself is thought of as an individual: it is 'conceived as a single, integral entity' (P. Jones, 1999b, p. 86). Any given right that the group might have is to be thought of as its right, not as the right of its members thought of as individuals.

Can a group, thought of in these terms, have rights? Jones argues that when we ask this question, we are asking a question similar to the one we ask when we ask whether animals or future generations can be thought of as having rights. The answer lies in the way in which we attribute moral standing to these entities. Here, the key question is whether a group as an entity can have moral standing in a way that is not simply a function of the moral standing of its members. For it to do so, a group must be understood as an entity that has an identity of moral significance that is morally prior to the interests and rights it may then be said to possess.

For example, a nation, on this account, would be conceptualized as an entity that has an identity, a way of life, a self-understanding, a character, that should be respected and granted political recognition for its own sake—including rights such as self-determination. By contrast, the collective conception of group rights would see nationhood as having value only in that it recognizes and serves the interests and well-being of the individuals who are its citizens (see Box 1.8).

Group Rights as Human Rights

The key contrast can be briefly summarized: on the collective conception, group rights are a function of the interests of the group members' individual interests, and thus the rights of the group will always be a function of the rights of its members. Because of this, we can conclude that some group rights can be understood within the discourse of human rights. By contrast, group rights understood on the corporate conception cannot be thought of as human rights. They belong to a separate moral subject, the community, or group, whose rights exist in some sense independently of the rights of its members.

BOX 1.8 THE ASIAN VALUES DEBATE

The so-called Asian values debate is a vivid illustration of the political nature of human rights, providing us with a range of controversies to examine, which engage with the different forms of human rights discussed in this chapter: liberty rights, welfare rights, and group rights. In the 1990s in particular, a variety of Asian political elites used a mixture of arguments about economic development, self-determination, culture, philosophy, and religion to contest the political priorities set by 'Western' discourses of human rights (Langlois, 2001).

The 'Asia' advanced here by many of the anti-democratic ruling elites of the region, however, was itself a political vision, and one as contested within Asia as it was elsewhere (similar debates have been held in other regions, most notably Africa). The elites' use of economic rights (especially around the discourse of development) to limit liberty rights and their invocation of cultural and religious traditions and identities of the corporate conception have received rigorous criticism. In turn, however, many of these critical voices are themselves not happy with the dominant global discourse of human rights, and also draw on intellectual and social resources based in different cultural traditions and embodying different political priorities to the dominant human rights discourse (Langlois, 2001).

The danger with the corporate conception of group rights is that the proponents of a group right may argue that it is a matter in relation to which it is only the group that has moral standing, not individuals or minorities within the group. This would authorize rejecting, ignoring, or silencing competing claims from individuals—thus opening a space for group rights to threaten human rights. By contrast, the collective conception protects against such conflict by requiring the group's rights to respect those of the individual; it does not allow for the group to be able, in Jones's evocative phrase, to write the individual out of the moral calculation (P. Jones, 1999b, p. 93). It is only with a conceptual scheme that guarantees this protection of an individual's human rights that we can endorse group rights as human rights; thus, we can conclude that for group rights to be understood as a part of the morality of human rights they must be construed with the use of the collective conception of group rights.

KEY POINTS

The effective implementation of human rights norms has a significant collective dimension, but group or solidarity rights have always been controversial.

Group rights can be understood under two conceptions: the collective and the corporate conception.

The collective conception allows for a form of group rights that also preserve the integrity of people's individual rights.

The corporate conception of group rights conflicts with the broader morality of human rights because it provides no basis to protect individuals and subgroups against the potential coercive power of the group.

Critical Thinking Question:

Why is it that the discussion of group rights demonstrates the importance of the individual in the overall morality of human rights?

Human Rights as a Political Project

The rhetoric of human rights can sometimes obscure the many ways in which the human rights movement is a political movement. The talk of universalism, of common standards for human kind, and of inalienable and self-evident rights can give the impression

that all the big questions about human rights are settled. As even a cursory investigation of the history of the human rights idea shows, however, the greater part of what we appeal to when we appeal to human rights is controversial and contested. There are four levels at which the political nature of human rights is important.

The first level has to do with the normative tradition out of which human rights historically emerge. The normative under-girdings of human rights are from liberal political theory and, before that, from the natural law tradition. In our contemporary world, the language of human rights is being spoken by people who work in a great variety of other traditions, and the confluence of these traditions with that of the liberal one produces contestation, dispute, and disagreement. The claim that the liberal approach should continue to be the arbiter or referee in the continued development of human rights as they go global is deeply controversial. Similarly, any change to the existing human rights corpus brought on by adopting values from other traditions is also deeply controversial. There are no fixed answers about how to resolve these conflicts.

A second level at which human rights are political concerns rights declarations—quintessentially the UDHR, but also its precursors, and the subsequent human rights instruments created through the UN and regionally. Human rights declarations are usually the product of a committee appointed by a political authority. What goes into a declaration and what is left out is determined by those involved in the drafting. They do not have clear and pristine access to human reason or religious revelation; the rights that they declare are heavily contingent on the historical and political framework in which they work. However good or bad a particular rights declaration may be, it is always a political outcome, a compromise, or a diplomatic resolution of competing interests. Rights declarations, then, must also be recognized as political instruments.

The implementation of a rights regime is the third level at which rights are political. The decision to describe certain states of being as human rights abuses, the decision to use state power to change circumstances or to detain or free individuals in the name of human rights—these are all profoundly political decisions, and they are decisions that of necessity are engaged with in a local context. The diversity of human communities may well mean that behaviour that in

one place is considered a rights abuse is routinely accepted somewhere else. There is no settled means for universal resolution of these differences.

The fourth level at which human rights are political is the most familiar: rights emerged within the Western tradition as a way of preserving the freedoms and liberties of individuals and groups against the powers of the state. The political project of human rights is a strategy for fighting against existing power structures in the hope of creating a social environment that is more nearly just. Local context is everything in this equation, and where that local context is inhospitable to the principles embedded in received human rights norms, the struggle can be interminable and disheartening.

What is common across these four areas is the way in which the normative agenda pursued by human rights practitioners is both displayed and questioned, challenged and interrogated (Langlois, 2001; Baxi, 2006). Whether one is explaining a normative tradition, declaring a right, applying some aspect of a rights regime, or defending the rights of the abused against powerful interests, one is asserting a set of political beliefs about the value of human beings and the way in which they should be treated. Defending those convictions is an essential part of the human rights project

KEY POINTS

Human rights are political in the following four senses:

Human rights are political because they embody a set of norms that emerged out of the tradition of political liberalism, with which not all identify.

Specific human rights regimes are created by groups of people who have their own political agendas and constituencies, and who must make decisions about what to include and exclude that cannot satisfy everyone.

The implementation of any established human rights regime is subject to interpretation, political context, and local circumstances.

The pursuit of human rights translates into local engagement, and quite often bitter confrontation, with prevailing unjust power structures.

Critical Thinking Question:

Which political aspects of human rights do you think make human rights a radical or revolutionary political doctrine?

and is ultimately what we are doing when we engage in debates about the normative and theoretical justification of human rights.

These in turn are present in many of the debates in contemporary global politics over the meaning, usefulness, and effective implementation of human rights. This chapter has shown that understanding the history and philosophy of human rights is essential to being able to navigate the complex political debates surrounding the desirability and normative content of human rights reform in the international system.

? QUESTIONS

Individual Study Questions

1. Why do the rights of international human rights law need philosophical or moral foundations?
2. Explain why having a right is most important when we lack the object of that right.
3. What are the common elements of the various liberal justifications for rights?
4. What lessons can we learn from the Asian values debate?
5. Why and in what senses are human rights political?

Group Discussion Questions

1. Why is the history of the human rights idea important today?
2. What are the strengths and limitations of Jacques Maritain's position on the justification of rights?
3. Why is the negative/positive distinction an inadequate way of thinking about the differences between liberty and welfare rights?



FURTHER READING

Baxi, U. (2006). *The Future of Human Rights*. Oxford: Oxford University Press.

The author connects the sometimes complacent arguments about human rights theory with the lives of those suffering human rights abuse and considers the new challenges facing human rights today.

Beitz, C. (2009). *The Idea of Human Rights*. New York: Oxford University Press.

This book questions how we should best understand the contemporary practice of human rights in international politics.

Brysk, A. (2013). *Speaking Rights to Power: Constructing Political Will*. Oxford: Oxford University Press.

An examination of how it is that talk of human rights can transform the world. The author examines many cases where proponents of human rights have made them matter in the battle against powerful interests.

Griffin, J. (2008). *On Human Rights*. Cambridge: Cambridge University Press.

A state-of-the-art attempt to provide a substantive theory of human rights.

Ignatieff, M. (2001). *Human Rights as Politics and Ideology*. Princeton, NJ: Princeton University Press.

In two highly accessible essays, Ignatieff sets out all the major issues to do with human rights in contemporary international politics; his views are then interrogated by a number of eminent commentators.

Langlois, A. J. (2001). *The Politics of Justice and Human Rights*. Cambridge: Cambridge University Press.

This book considers the questions of universalism and pluralism through an examination of the so-called Asian values debate of the 1990s.

Mahoney, J. (2007). *The Challenge of Human Rights*. Oxford: Blackwell Publishing.

This book traces the rise of human rights as a resource for ethical reasoning in politics.

Reus-Smit, C. (2013). *Individual Rights and the Making of the International System*. Cambridge: Cambridge University Press.

An account of the evolution of the contemporary system of states, in which the role played by individual rights in shaping that system is examined anew.

Zivi, K. (2012). *Making Rights Claims: A Practice of Democratic Citizenship*. Oxford: Oxford University Press.

An examination, both theoretically and practically, of what happens when people make the bold claim that they have rights, particularly when those rights are not yet enjoyed.