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Normative and Theoretical Foundations of Human Rights

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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 the 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 lay 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

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 imprescriptable rights of man. These rights are liberty, property, security, and resistance to oppression.

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 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 mooted, they have been dogged by philosophical questioning. Natural and imprescriptable 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, this 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. While these theories were for a time quelled by powerful restatements of natural law theories (such as Samuel Pufendorf’s (1632–1694)), they nonetheless added to the cultural shift that highlighted the moral autonomy of the individual, undermined the derivative natural law–duty–rights structure, and

focused the popular imagination on the idea of basic, inalienable, rights—natural rights that could be derived from our natural humanity, not 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).

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 (1729–1797)

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 (1818–1883)

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)

Conservatives are most famously represented by Edmund Burke (1729–1797), 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’ beyond government 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 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 (1818–1883) 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.

Modern Human Rights

This was all changed by the Second World War (1939–1945). 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** (1945–1949), 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

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.

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 expressed in the idioms of first and second generation rights (see Box 1.4): 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 inno-

cence; the ownership of private property, freedom of religion and expression, and the right to take part in the government of one’s country (**first generation rights**); and, more controversially, rights to adequate standards of living, education, and cultural participation (**second generation 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, were 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.

Box 1.4 Three Generations of Rights

The idea of generations of rights was coined by Karel Vasak in the 1970s. Vasak adopted the rallying cry of the French Revolution—Liberty, Equality, Fraternity—as his template for organizing our understandings of human rights. Vasak’s template has become commonplace, despite being unsatisfactory either as a theoretical or as a chronological account of human rights.

Liberty rights are the first generation rights. These civil and political rights were the first to be established historically, and have often been viewed as the basis or core of any possible rights system. These rights emerged to protect the interests and negative liberties of the individual against the power and encroachment of states, and include freedom of speech, religion, and association, rights to a fair trial, and voting rights, among others. They are codified in the UN’s **International Covenant on Civil and Political Rights**.

The second generation rights, equality rights in Vasak’s scheme, recognize that certain basic goods should be equally available to all people; that a certain set of political

and economic circumstances are needed for human flourishing. Included are rights to basic levels of economic subsistence, education, work, housing, and health care, among others. They are found in the UN’s **International Covenant on Economic, Social and Cultural Rights**.

These rights are often called positive rights, as opposed to the negative rights of the first generation, because they require rights providers to act, rather than to refrain from interfering. This distinction is itself subject to much criticism (see Shue, 1980).

Third generation rights, known as fraternity, solidarity, or group rights, attends to communal aspects of human being. These rights extend the reach of human rights to matters such as the recognition of minority groups, social identity, and cultural issues. These rights are often provided for by dedicated UN human rights instrumentalities such as the Declarations on the Right of Peoples to Peace, or the Right to Development. This category of rights is the most controversial and least institutionalized.

Box 1.5 Jacques Maritain on the Justification of Rights

I am fully convinced that my way of justifying the belief in the rights of man [sic] and the ideal of liberty, equality, fraternity, is the only one which is solidly based on truth. That does not prevent me from agreeing in these practical tenets with those who are convinced that their way of justifying them, entirely different from mine, or even opposed to mine in its theoretical dynamism, is likewise the only one that is based on truth. Assuming they both believe in the democratic charter, a Christian and a rationalist will nevertheless give justifications that are incompatible with each other, to which their souls, their minds and their blood are committed, and about these justifications they will fight. And God keep me from saying that it is not important to know which of the two is right! That is essentially important. They remain, however, in agreement on the practical affirmation of that charter, and they can formulate common principles of action. (Maritain, J. (1947). The possibilities for co-operation in a divided world. Inaugural address to the Second International Conference of UNESCO, 6 November)

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 (see Box 1.5). 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 Declaration'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 of us 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 sixty 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 1.6). 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 an ends, not a 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. Here, I will

Box 1.6 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 make 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: 11–12)

briefly indicate some alternative contemporary philosophical approaches to the justification of rights within liberalism.

Human dignity

The rights that people possess have often been argued to be grounded in the basic dignity of the human person. Within the Western tradition, the principle historical source for this idea of human dignity is the Christian idea that man is made in the image of God—in the *imago dei*. Liberal rights and freedoms are derived from the dignity of man, which rests on the character of God—the ultimate source of value. The human dignity approach to rights justification has been significantly effective in making rights approaches understood in non-Western political and religious traditions. (See Perry, 2000.)

Reason

More commonly, 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, and the prerequisite conditions for fulfilling this activity are considered to be entitlements. Thus, humans have entitlements to well-being and freedom as these are required for us to engage in purposive activities; this in turn becomes the basis for a fuller doctrine of human rights. (See Gewirth, 1996.)

Autonomy

The self-directed or self-authored life is considered to be the human ideal. Autonomy and choice are 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.)

Equality

The idea of political equality can mean the right to equal treatment, or the right to treatment as an equal. The former refers to goods and opportunities, and is commonly granted in Western democracies in relation to civil and political rights (such as the right to one vote per person); it has had little acceptance in relation to goods. These treatments of equality rest fundamentally on the notion of treatment as an equal—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.)

Needs

All human beings have certain basic needs—the most obvious ones being to do with security and subsistence. The universality of these needs contributes to the case for seeing them as basic rights. But the requirements for fulfilling these needs also links them theoretically to the concept of rights, because the fulfilment of these needs is dependent on the availability of certain freedoms—such as freedom of movement, freedom of association, and freedom of information. Without effective control over these freedoms, people cannot be guaranteed their basic needs. (See Shue, 1980.)

Capabilities

This neo-Aristotelian approach focuses on what people are capable of being and doing: it is oriented toward human potential and fulfilment. Capabilities themselves are defined as the general goods that are required to live a life of dignity, and are seen by proponents as the more fundamental normative basis upon which rights regimes must rest. This approach is argued to provide a more pluralistic justification for human rights, and has often been deployed as a corrective in arguments over gender justice. (See Sen, 1999; Nussbaum, 2000.)

Consensus

This pragmatic approach is reluctant to be too specific about a particular grounding or foundation for human

rights, focusing instead on areas of agreement among diverse people, and using this agreement as the basis for legitimating rights. This approach has the advantage of being pluralistic, but the disadvantage of only functioning well where there is already substantial agreement, either philosophically or institutionally, and generally trades on a background liberal culture. (See Rawls, 1971, 1993, 1999.)

KEY POINTS

The Second World War was the catalyst for the modern re-deployment 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.

Liberal 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.

The Universalism of Human Rights

A key difficulty is the UDHR's claim to have *universal* application. Some people simply reject the idea of human rights, or the idea that such rights might be universal. Others advance modified approaches to human rights.

Rejecting Human Rights

The challenge against the universalism of human rights comes in a number of different forms. The most extreme is the rejection of human rights altogether. Commonly, this rejection of human rights is put in one of two related ways (Freeman, 2002, Chapter 6). The first is the argument from **cultural relativism**, a conceptual rejection of rights that 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 that 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 not being respectful of different cultural, religious, and philosophical traditions, and therefore,

ultimately, of not respecting 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. 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 that 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 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 into 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 that must be addressed to political leaders who engage in the human rights challenging rhetoric of anti-imperialism: Are the cultural beliefs and practices that 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 that 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 that 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 that grounds human rights, this rhetoric's failures and inconsistencies serve to further support liberalism's claim to be a more adequate safeguard against imperialism.

Modifying Human Rights

Some challengers value human rights but question the justifications used by contemporary liberal theorists. The criticism is that the reasoning from which the universality derives is a very particular way of thinking about what it is to be human, which might not legitimately apply to all human persons. The approach is criticized for being **foundationalist** and **essentialist**. It proposes a certain foundation for moral thinking, a

foundation that is characterized as universal; the criticism is, however, that this foundation only stands if one agrees with the philosophical premises on which it is based, and that there is in turn no knock-down argument to guarantee the veracity of those premises. Similarly, it is essentialist, in that it claims that certain qualities or capacities (reason, autonomy, for example) are essential to what it means to be human, or to how we determine the nature of morality and ethics; in turn, there is no final agreement on what qualities or capacities are central to our ‘humanness’. Therefore, to proclaim a set of *universal* rights on the basis of such *particular* assumptions is to claim too much; it also excludes from consideration a range of other ways of thinking and feeling about the human condition and how we should respond to it.

The Feminist Challenge

This form of criticism of the universality of human rights has often been taken up by feminist thinkers. Their argument has often been that ‘the rights of man’ were precisely that: rights afforded to men. They argue that historically women were thought of quite differently from the way in which men were conceptualized. For example, the ‘right reason,’ autonomy, and equality that were used to characterize the essential qualities of what it meant to be human within the liberal tradition were not considered to be characteristics properly assumed by women. Women were not understood to be rational or autonomous, and while they may have been considered to have equal moral worth with men, they certainly did not have equal status or place in society. The feminist movement has been successful in bringing many of these issues to attention and in changing both social views and institutions. By the time of the creation of the UN, feminists had gained sufficient influence to have the rights of women included in the UN Charter, a move that was central to the increased institutional recognition of women’s rights at the international level. Key milestones here were the Decade for Women (1975–1985) and the adoption in 1979 of the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW).

But there is still a long way to go. Theoretical issues continue to play an important role in the debates about women’s rights (see Okin, 1999; Nussbaum, 2000; Gould,

2004). A key example here is the debate over the way in which we divide the social world into a private sphere and a public sphere. Traditionally, liberals have argued that this division, which is designed to protect citizens’ private lives from the power of the state, plays a crucial role in protecting women from rights violations. However, many feminists will argue in turn that it is precisely in the private sphere that women are most vulnerable to rights abuse by powerful men, so that sanctioning the distinction is tantamount to ignoring the most egregious and systematic denial of women’s rights. It is in the private sphere that sexual violence, reproductive rights, child rearing, and many other issues are faced by women each day. The concern is that many of these problems are not adequately addressed by the received understanding of rights. On the one hand, the theoretical structures used to explain and justify rights values appear to be significantly disconnected from both the concerns and experiences of women; on the other hand, the institutions that have emerged out of the received rights politics fail to adequately address the way in which women suffer rights abuses, primarily because their default setting is to address the rights abuses experienced by men. For some feminists, this is the basis for a reform agenda. For others, the deficiencies of the present framework are so serious that they de-legitimize the framework altogether, requiring a more radical solution.

Religious Challenges

The evolution of modern rights in the West went hand in hand with increased challenges to Christian religious orthodoxy; but the values that were to be articulated as rights were nonetheless deeply shaped by those same patterns of religious belief. At the global level, however, there are many different forms of religion. These in turn are structured around many different values systems, which may or may not be compatible with modern human rights—both in form and substance. For example, the autonomy and equality that is so privileged by Western liberalism has often been directly challenged by religious leaders from other traditions. This is a challenge both to the underlying philosophical framework of human rights, and to specific rights as articulated in the UDHR and other human rights documents.

The responses to global religious diversity by human rights theorists and proponents are many and varied. Some take the view that, because human rights are to be universal, the introduction of specific or particularistic values drawn from religions will undermine the universalism of rights. For others the only way for human rights to be universal is to translate them through the particularistic traditions of human beings. So, for Muslims or Hindus (as two examples) to be able to embrace human rights, they must be able to give justifications for the values expressed by the human rights movement; but these justifications must also be genuinely integral to their own tradition as well.

Some religious communities reject human rights completely, seeing them as alien and incompatible with their way of being. Others have moved from rejection to embrace—the Roman Catholic Church being the key example here. Many religious communities view human rights as consonant with their own traditions. Still others have been persuaded that there is a need to reinterpret their own tradition in the light of human rights, seeing this as an opportunity for the revitalization and rejuvenation of belief structures at risk of ossification.

Group Rights

The idea of group rights poses a fascinating challenge to rights universalism, a challenge that emerges out of the success of human rights (Kymlicka, 2007). Proponents of group rights argue that for certain groups of people it may be legitimate to invoke specific rights, or specific interpretations of rights, which do not apply universally. Access to these rights is dependent on membership of a group. These groups may be of a religious, social, cultural, indigenous, gender, sexual orientation, or other minority issue nature.

Universalists have significant concerns about group rights (Jones, 1999). One concern rests on whether such rights are understood as the rights of individuals that arise from membership of a group, or whether they are understood as rights that accrue to the group itself (however the identity or nature of this group might be understood, itself a vexed question). If group rights are the rights that accrue to the group, liberals have concerns about how individuals within such groups will be treated. Will they, for example, have a right to speak, or crucially, to exit, if they disagree with the behaviour of

the group? And how would such an exit right be adjudicated against the group's right to ensure its survival and growth?

The rights of minorities and groups are without doubt significant political issues. Many of these rights have been realized or bolstered because of the influence of the now global human rights regime. There is a grave concern, however, that the values of some groups may undermine those of the universal human rights regime. The liberal account of rights that informs the human rights regime is premised fundamentally on the well-being of individuals. Group rights are of use to human rights when they bolster those groups of individuals whose human rights are inadequately supported by universal regimes. But what this suggests strongly is that group rights should always be derivative from human rights—understood, as they are in the UDHR, as the rights of individuals. This sets up a permanent tension between the proponents of human rights and others who do not place so much value on the liberal individualism that structures the human rights movement. Awareness of this tension in turn helps us to see the quintessentially *political* nature of the human rights project (Jones, 2008).

KEY POINTS

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.

Feminists argue that the international human rights regime is inadequate to satisfy woman's rights. Some argue for reform, others for more radical solutions.

Some religious groups reject the liberal rights tradition; others adopt it wholeheartedly. Some religious groups reinterpret human rights through their own traditions; others explicitly use human rights to reform their own tradition.

Group rights are invoked as a way of protecting the rights of minorities who belong to identifiable groups. These rights are politically very controversial, not least because in some forms they can undermine the protections of the more general human rights regime.

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 emerges. 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. None of these people 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 and is ultimately what we are doing when we engage in debates about the normative and theoretical justification of human rights.

KEY POINTS

Human rights are political in the following four senses.	The implementation of any established human rights regime is subject to interpretation, political context, and local circumstances.
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.	The pursuit of human rights translates into local engagement, and quite often bitter confrontation, with prevailing unjust power structures.
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.	

Conclusion

The language of human rights is fundamentally a normative or ethical language, one that emerges out of the political liberalism of the Enlightenment, and one that leads to a very distinctive form of political engagement. In our modern period, the Universal Declaration of Human Rights is the defining text of the human rights movement; but behind the rights that are declared in that document are layers of history and philosophy.

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 is the history of the human rights idea important today?
2. Why do the rights of international human rights law need philosophical or moral foundations?
3. What are the strengths and limitations of Jacques Maritain's position on the justification of rights?
4. Explain why having a right is most important when we lack the object of that right?
5. What are the common elements of the various liberal justifications for rights?
6. What appear to be the key differences between the three generations of rights?

GROUP DISCUSSION QUESTIONS

1. Examine the Universal Declaration of Human Rights and explore how its key words and phrases embody the ideals of political liberalism.
2. Why are the cultural relativists and imperialists wrong to dismiss human rights?
3. Discuss the different approaches of feminists to human rights.
4. In what ways do religious traditions relate to human rights?
5. Why and in what senses are human rights political?

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.
- Freeman, M.** (2002). *Human Rights: An Interdisciplinary Approach*. Cambridge: Polity.
A useful introductory text, covering the history of human rights, key theoretical issues, and contemporary challenges such as globalization.
- Griffin, J.** (2008). *On Human Rights*. Cambridge: Cambridge University Press.
A state-of-the-art attempt to provide a substantive theory of human rights.
- Herbert, G. B.** (2002). *A Philosophical History of Rights*. Piscataway, NJ: Transaction Publishers.
A comprehensive philosophical survey of the history of the idea of rights.
- Ignatieff, M.** (2001). *Human Rights as Politics and Idolatry*. 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.
- Lauren, P. G.** (1998). *The Evolution of International Human Rights: Visions Seen*. Philadelphia, PA: University of Pennsylvania Press.
A comprehensive historical account of the rise of human rights.
- Mahoney, J.** (2007). *The Challenge of Human Rights*. Oxford: Blackwell Publishing.
Traces the rise of human rights as a resource for ethical reasoning in politics.

WEB LINKS

- <http://plato.stanford.edu/entries/rights-human/> The human rights entry in the online Stanford Encyclopedia of Philosophy, which provides valuable discussion and useful links to related topics.
- http://europa.eu/pol/rights/index_en.htm The European Union Human Rights website provides a discussion of the role of human rights in the EU, including legislation and other activities.
- <http://www.rightsphilosophyforum.org/index.html> The Rights Philosophy Forum provides biographies, learning guides, and other resources for those interested in studying human rights.
- <http://www.natsiew.nexus.edu.au/lens/udhr/index.html> An annotated Universal Declaration of Human Rights provided by the Australian National Aboriginal and Torres Strait Islander Education website. It provides links under each article of the UDHR to the websites of organizations concerned with the rights expressed in that article.

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