

Introduction: human rights and the fifty years' crisis

Tim Dunne and Nicholas J. Wheeler

The humanitarian principles embodied in the UN Charter and the Universal Declaration of Human Rights marked the beginnings of a full-blown global human rights regime. The Declaration, signed fifty years ago, established a standard of civilised conduct which applies to all governments in the treatment of their citizens. For example, the Declaration requires states to provide subsistence needs and basic welfare provision as well as a panoply of civil and political rights. Although the latter assumed prominence in the subsequent history of the post-1945 regime, it is important to underscore that from the outset, *universal* human rights encompassed a concern for positive rights (such as collective provision of education and healthcare) as well as negative rights (freedom from repressive government policies).

The framers of these basic documents assumed that there was no necessary conflict between the principles of sovereignty and non-intervention and respect for universal human rights. This represented a historic evolution in the norms of international society which from the seventeenth century onwards had maintained that the domestic practices of governments were not a subject of international concern. According to the Westphalian conception of legitimacy, a government's claim to be recognised as sovereign was not dependent upon how it behaved towards its own citizens. As a consequence of the experiences of totalitarianism, governments recognised that there was a need to challenge the Westphalian model of unlimited sovereignty. In these emerging human rights norms, there was a clear consensus that states must be made accountable for their behaviour.

Underlying the evolution of human rights principles was the conviction held by the framers of the Charter that there was a clear link between good governance and the maintenance of international peace and security. It was believed that the aggressive foreign policies of the Axis powers were caused by the militaristic nature of their political systems. Diplomats and state leaders in the early post-1945 period endorsed the 'democratic peace' thesis which has been rejuvenated in

the theory and practice of international relations since the end of the Cold War.

The manifesto for human rights and international security contained within the Charter and the Declaration represented, therefore, a radical assault on the existing principle of international legitimacy. Sovereignty remained the constitutive norm of the society of states, but the meaning that was given to sovereignty had been modified. In R. J. Vincent's words, the way a government treats its people exposes 'the internal regimes of all the members of international society to the legitimate appraisal of their peers'.¹

Since the first wave of standard-setting, successive decades have seen the growing codification of human rights into both treaty and customary international law. Alongside this strengthening of the regime, there has emerged a growing moral awareness among world public opinion of human rights issues and concerns, reflected in the existence of NGOs like Amnesty International which act as the conscience of the regime. An informed and active citizenry has a crucial role to play in monitoring state behaviour for the reason that there is a disjuncture between the declaratory commitments of governments to protect and promote human rights and their compliance with these standards. For example, Amnesty International pointed out in its 1997 Report that of the world's 185 sovereign states, 123 routinely practise torture.² Even more striking is the fact that the crime of genocide which is outlawed by the 1950 Genocide Convention has not been banished from the practice of world politics, as the appalling tragedy of Rwanda illustrated in April 1994. In short, governments – many of whom drafted and signed the 'international bill of rights' – have massively defaulted on their normative commitments.

One of the principal purposes of *Human Rights in Global Politics* is to reflect critically upon the stark contradiction between the idea of universal human rights and practices of human wrongs. To this end, we have brought together a distinguished group of scholars and practitioners to engage with the question: why are there all these human rights standards but the bodies keep piling up? The assumption here is that there is a universal standard of human rights but states fail to live up to it. However, a recurring theme in the volume is the questioning of the foundation of this universal standard. Perhaps another reason for this compliance gap is that political communities interpret universal human rights very differently. On this reading, the explanation for the fifty years' crisis in the human rights regime is expressed succinctly by E. H. Carr: 'the question is not who are the standard-bearers, but *what* is the standard?' Two possible responses suggest themselves. First, different societies

'sign up' to the idea of universal human rights but disagree over the meaning and priority to be accorded to these rights. This intersocietal critique, when wielded by non-liberal states, becomes an assault on the West's understanding of what counts as human rights. Second, and more subversive from a human rights perspective, is whether there is a shared discourse of human rights *per se*. In the course of this Introduction we provide an overview of the explanations given by our contributors for the existence of the compliance gap and their prescriptions for closing it.

The five chapters in Part I of the volume by Booth, Donnelly, Brown, Parekh and Midgley, have two general purposes: first, to critically assess orthodox attempts to justify human rights in terms of grand narratives of reason or nature; second, to evaluate the theoretical possibilities for constructing a form of universal values which is *not* pre-given by either of these narratives. The guiding question is whether human rights practices can exist without presupposing an essential human nature. Part II of the volume provides a detailed empirical investigation of specific practices of global human wrongs, as well as exploring how international human rights norms might be strengthened. Richard Falk, Mary Kaldor, Martin Shaw, Gil Loescher, Georgina Ashworth, and Ken Booth and Tim Dunne focus on the issue areas of genocide, ethnic cleansing, mass murder, refugees, women's human rights, and the right to education, whilst Andrew Hurrell considers the tensions between universalism and particularism in relation to the normative structures of the society of states. With the exception of Hurrell, the contributors to Part II share the view that the compliance gap stems from normative failures on the part of states. Hurrell's questioning of a universal standard brings us back to the importance of the philosophical investigations in the first part of the volume.

Developments in postmodern social and political theory challenge the very quest for moral certainty which underpinned the vision of the post-1945 human rights regime. Postmodernists tell us to be incredulous towards metanarratives such as 'humanity': surely, they argue, the presumption of universal human rights is but another example of Enlightenment mythology. An underlying theme of this volume is to reflect upon the implications for the practice of human rights of the contention, made by postmoderns, that the architecture of the human rights regime has no epistemological warrant for the foundations it assumes.

Historically, the idea of rights has embodied two foundational claims. First, that there is an identifiable subject who has entitlements; and secondly, that to possess a right presupposes the existence of a duty-bearer against whom the right is claimed. R. J. Vincent expresses this relationship with characteristic clarity:

		Ontology	
		Cultural relativism	Universalism
Epistemology	Anti-foundationalism	Communitarian pragmatism	Cosmopolitan pragmatism
	Foundationalism	Traditional communitarianism	Liberal natural rights

Figure 1. Background social theories of human rights.

A right in this sense can be thought of as consisting of five main elements: a right-holder (the subject of a right) has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right) against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (the justification of a right).³

It is this last point, that there is ‘some particular ground’ upon which rights-holders can justify their claim to rights, which has framed the dominant discourse on human rights.

Figure 1 identifies four key metatheoretical positions in the human rights discourse. The lower-right cell is occupied by natural rights theorists who hold onto the liberal view of human rights as universal rights. The ontological underpinning of this position, as we describe in more detail below, is the belief that morality exists by virtue of our built-in humanity.

The idea of *human* rights, for a liberal natural rights theorist, is that we all have rights by virtue of our common humanity. Individuals have certain kinds of rights as members of particular communities, but human rights belong to humanity and do not depend for their existence on the legal and moral practices of different communities. Thus, even if individuals are denied rights by the laws of a particular state, they still can make a claim to rights by virtue of their membership of common humanity. What, then, philosophically grounds such a claim to universality?

One attempt to furnish a defence of common morality historically has been made by the natural law tradition. At its core, natural law maintains that there is a unity among all peoples of the world irrespective of cultural difference. For Vitoria, writing in the sixteenth century, humankind was governed by natural laws of love and amity. Later

society-of-states theorists recognised the intrusion of the ‘law of nations’ into the idea of a cosmic moral law, but nevertheless hold on to the idea that natural law provides an underlying moral foundation. Whilst classical thinking on natural law placed duties at the centre of its moral deliberations, the challenge for contemporary advocates is to show how natural law can support a theory of universal rights.

Epistemology plays a central role in discerning the content of natural rights. Claims to know what is right are founded on ‘those basic precepts of common morality [which] are accessible to human reason, they can be known by anyone capable of thought and action’.⁴ Thus, the faculty of reason which is assumed to be transcultural enables individuals to deduce the correct moral code by which to live their lives. This is an appealing idea but the fundamental weakness of ‘practical reason’ is that it cannot easily explain why moral practices vary within and between cultures.

Recognising that natural law is a problematic justification for human rights, we nevertheless agree with Chris Brown’s contention that ‘some idea of natural law must underlie all genuinely universal approaches to human rights’.⁵ Contemporary liberal universalists like R. J. Vincent and Henry Shue find themselves occupying the same epistemological terrain as the natural law tradition (our lower-right cell) but put rights rather than duties at the centre of their moral reasoning. The kernel of this natural rights position is that all individuals have certain basic rights because they share the same essential human nature. Shue’s understanding of ‘basic rights’ develops out of the idea that without the satisfaction of needs such as ‘subsistence’ and ‘security’ it is impossible to enjoy all other rights.⁶ However, as Vincent argues, some natural rights thinkers identify ‘a second, and deeper, appeal not to our physical but to our moral nature’.⁷ ‘It is in this context’, Vincent continues, ‘that human rights are sometimes called “inalienable”’.⁸

Liberal natural rights thinking has underpinned the development of the international legal regime on human rights. For evidence of the widespread acceptance of the discourse of ‘natural rights’, we need look no further than the United Nations Charter which seeks ‘to reaffirm faith in fundamental human rights’. Similarly, the Preamble to the 1948 Universal Declaration of Human Rights states that the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’.⁹ The fundamental problem with defending the human rights regime in terms of natural rights thinking is the failure of its advocates to provide a convincing theory of human nature which would ground notions of human dignity.¹⁰

In chapter 1 of the volume, Ken Booth argues that defending the idea of human rights in terms of a fixed theory of human nature corrupts our thinking about the possibilities for humanity at the end of the millennium. For Booth, the question ‘Are human rights universal?’ is an unhelpful one because it is too soon in human history to give a definite answer. By locating the subject of human rights at the interface of the disciplines of International Relations and Anthropology, Booth is able to identify three tyrannies that oppress the theory and practice of human rights: ‘presentism’, ‘culturalism’ and ‘positivism’. ‘Presentism’ views the social world as natural and immutable, whereas social anthropology tells us that humanity is constantly evolving and that appeals to human nature as the ‘clinch argument’ are always overturned by changing social relations. This for Booth is the starting point for thinking about the question of the universality of human rights.

The second tyranny is ‘culturalism’ – the belief that cultures can be black-boxed in the same way that realists in International Relations black-box states. Booth rejects the exclusivity of cultures on the grounds that it privileges traditional values at the expense of emancipatory ones. The claim of cultural authenticity should not be allowed to stop the conversation on human rights anymore than the appeal to a particular view of human nature should close discussion on the possibility of a warless world. In the past, Booth has cautioned against the dangers of ethnocentrism – seeing other cultures through the prism of one’s own sense of cultural superiority – but he argues that sensitivity to the cultural values of others should not be allowed to degenerate into the dogma of culturalism.

The idea of emancipation is the only effective escape from regressive human rights thinking but Booth acknowledges that this raises as many questions as it answers. The final part of the chapter tries to answer some of these questions through a critique of the third tyranny of ‘objectivity’ and a defence of human rights as universal values. The problem with claims to objectivity in the social world is that they naturalise the existing order as given and immutable. As Booth argues, this is threatening to human rights because by leaving power where it is, the daily round of human wrongs is reproduced. Cultural relativists and postmodernists argue for toleration of diversity, but Booth thinks that we should change the focus to asking ‘how much diversity should be tolerated?’ The people who have to be heard are not governments, journalists or even human rights NGOs; rather, they are the victims of world politics who should be placed at the centre of theory and praxis in world politics. In deciding how much diversity is tolerable in world politics, Booth argues that a good place to start would be to ‘ask the

victims' whether they want to remain hungry and oppressed. If the answer is no, then he claims that 'there is no intelligible reason for saying "this is not my concern."'

In response to the question of what are the foundations for human rights, Booth follows Geoffrey Warnock and Mary Midgley in asserting that it is wrong to torture, starve, humiliate and hurt others. Human rights are not a matter of opinion, cultural prejudice or one community's story as opposed to another's; they are a response to these 'universal social facts'. These derive, according to Booth, 'from our animal nature (the need for food and shelter) and from our social character and potentiality'. Human rights, then, are an idea whose time has come, and this is reflected in the almost universal acceptance of the language of universal human rights.

Reading the human rights story as part of the moral evolution of the human race is echoed in chapter 2 by Jack Donnelly. Like Booth, Donnelly identifies a critical relationship between the ideas of human rights and human dignity. Historically, societies have secured human dignity through other mechanisms than human rights, but Donnelly shows how the idea of human rights emerged as a specific historical response to the challenges of modernity. Rather than depending upon an ahistorical account of the subject, he advances the claim that human rights arose in the West in the early part of the twentieth century as a way to overcome threats to human dignity posed by repressive political and economic structures.

Donnelly's willingness to side-step the question of how we ground universal human rights reflects his belief, like Booth's, that any attempt to resolve the metaethical foundations of human rights is a distraction. What matters for Donnelly is the 'remarkable international normative consensus on the list of rights'¹¹ found in the Universal Declaration, the 1966 International Covenants on civil/political, and economic/social rights and the 1993 Vienna Declaration. He supports this contention by appealing to the cross-cultural consensus on basic rights such as 'the rights to life, liberty, security of the person; the guarantee of legal personality; and protections against slavery, arbitrary arrest, detention, or exile and inhuman or degrading treatment'.¹² What further strengthens Donnelly's claim that there is a normative consensus underlying the human rights regime is the fact that in the daily round of diplomacy, state leaders justify their human rights policies in terms of these standards.

Whilst arguing that the various legal instruments which constitute the international bill of rights command 'a remarkable international normative consensus',¹³ Donnelly recognises that states do not always

uphold these standards. Individuals claim human rights against their state because states are the only bearers of correlative duties, but they frequently fail to fulfil these duties. It is this discrepancy between the human rights commitments of states and their actual practices which Donnelly sees as the central *problématique* of the contemporary human rights regime. The challenge then is to close the gap between the standard embodied in the regime and states' compliance with it. Liberals like Donnelly are cautiously optimistic that the regime can be mobilised by its supporters as a means to pressurise those states which transgress its rules and flout its conventions. Through public censure, promises of rewards for good behaviour, threats of economic sanctions and, ultimately, armed intervention, the society of states has the potential to use human rights as a civilising force against repressive governments.¹⁴

In stark contrast, Chris Brown argues in chapter 3 that the existence of the standard is itself the problem. Rights, in short, are a consequence of the civilised practices of liberal polities and not the *cause* of these. Therefore, Brown argues forcefully, any attempt by international society to close the compliance gap is a 'near-impossible task'. Brown criticises defenders of the regime from a communitarian perspective which holds that we have rights by virtue of our community and *not* some abstract notion of 'common humanity'. This is an argument that has traditionally been mobilised by cultural relativists, a position represented in the lower-left cell of figure 1. The central claim here is that morality is culturally bound and values can only be grounded in tradition. The idea, then, of individuals possessing inalienable rights which they claim against the state is unthinkable in many societies where the individual is embedded in a complex network of communal duties and familial responsibilities. Following Molly Cochran, we interpret cultural relativism as a form of moral discourse which '*founds* and enables the ethical discourse in which social judgements are possible'.¹⁵

Cultural relativists are often accused of being unable to judge between competing values. Brown's chapter shows the difficulties that relativists have in responding to this criticism. He argues that whilst 'some kind of lowest common denominator' might be present in diverse cultures, such a moral standard lacks a 'critical cutting edge' because it is reducible to these cultural practices. He qualifies this by recognising that certain human wrongs like genocide and mass murder will be caught by this moral minimalism. Although this 'general moral standard' provides a means to judge and criticise egregious regimes like Hitler's Germany, Pol Pot's Cambodia and Amin's Uganda, Brown argues that it is unable to deal with more routine human rights abuses.

In showing the difficulties that relativists have in criticising other cultures, Brown does not argue for a universalist position. Instead, he seeks to transcend the debate between relativists and universalists by arguing that the problem with both positions is their dependence upon epistemological foundationalism: the problem with universal critiques of relativism is that they assume that there is some non-relativist position upon which to stand. It is this claim which Brown rejects and he does so by drawing on the arguments of the postmodern philosopher Richard Rorty. For a pragmatist like Rorty, the idea that reason or science can access ‘justified true belief’ (epistemology) is nothing but a myth. Our beliefs are no more than contingent preferences which help us to cope with the complexities of late modern life. Rights, for Rorty, are nothing more than a story that liberal societies have decided to ‘tell’ and, as a consequence, it is only liberal societies which provide an epistemological context for human rights justifications.

The rejection by pragmatists of all narratives which posit universal truths would appear, at first sight, to sound the death-knell for defenders of human rights. However, Rorty argues that the jettisoning of epistemological foundationalism does not mean that liberals cannot defend human rights values. Rather, he argues that it is ‘we twentieth-century liberals’ who have the responsibility to nurture and strengthen the ‘human rights culture’ which is a fact of the post-Holocaust world. Crucially for Rorty, this culture ‘seems to owe nothing to increased moral knowledge, and everything to hearing sad and sentimental stories’.¹⁶ What human solidarity depends upon is the manipulation of the sentiments such that ‘we liberals’ come to realise that our differences with others are less important than our shared capacity to experience pain and suffering. As Brown points out, Rorty’s position has nothing to say to those societies which have not undergone a process of ‘education of the sentiments’. Thus, Rorty tells us that there is no knock-down argument against those Bosnian Serbs who choose to construct Bosnian Muslims as sub-human. He does not want to call these people inhuman or morally wrong as this implies the existence of a universal human nature; instead, he wants to argue that they have been deprived of the conditions in which to develop feelings of human solidarity. Brown recognises Rorty’s position ‘does not solve all the problems of relativism’ and sentimentality is an ‘inadequate’ response to human wrongs but reluctantly admits that ‘it is difficult to see what other moral vocabulary is available to us once we reach the limits of an ethical community’.

The strength of Brown’s position – which we label ‘communitarian pragmatism’ in figure 1 – is his attempt to hold on to human rights

whilst jettisoning their philosophical foundations. What the debate between the upper-left side of figure 1 and the upper-right illustrates is that dispensing with epistemological certainty has not resolved key questions about the nature and limits of an ethical community within which rights claims are situated. Whilst the contours of this new post-pragmatist debate between cosmopolitanism and communitarianism are not as clear-cut as between traditional communitarianism and natural rights theory, the conversation between communitarian and cosmopolitan pragmatism – represented in this volume by Brown on the one hand and Booth, Parekh and Midgley on the other – contributes to recent philosophical reflections on the possibilities for universal values in the wake of the Enlightenment.

In chapter 4, the moral philosopher Bhikhu Parekh argues for a conception of universal values which steers a course between the opposites of moral relativism and foundationalist claims of an essential and knowable human nature. Parekh agrees with Booth that the fundamental problem with relativism is ‘that we have no means of judging a society’s moral beliefs and practices’. At the opposite pole to relativism stands ‘moral monism’, a position which maintains that ‘we cannot only judge other societies but also lay down what way of life is the highest or truly human’ (lower-right cell in figure 1). Parekh finds this equally unsatisfactory because it assumes an essential human nature which can be revealed after the superstructure of cultural embeddedness has been stripped away.

Between these two extremes lies ‘minimum universalism’ which recognises the fact of moral diversity but believes ‘that moral life can be lived in several different ways, but insists that they can be judged on the basis of a universally valid body of values’. He identifies this position with H. L. A. Hart, Michael Walzer, John Rawls, Stuart Hampshire and Martha Nussbaum. Although this theoretical position has more to commend it than the other two, Parekh argues that it does not overcome the following objections. First, it relies on an account of human nature which brings it perilously close to monism; secondly, contrary to Donnelly, it is questionable whether there is a normative consensus on prohibiting even the most cruel and inhumane practices; and thirdly, universal principles are either too abstract or too weak to provide the possibility of judgement across cultures. Parekh is dissatisfied with all three existing approaches, advocating a theory of non-ethnocentric universal values. These, he contends, can only be constructed by means of a dialogue between equals. It is important to pause and reflect on what Parekh means by a dialogue and why we think it represents ‘cosmopolitan pragmatism’: