

## 2 Human Rights and the Politics of Contestation

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THE CONTENTIOUSNESS OF human rights is profoundly misunderstood in most of the literature. Commentators very often attribute the conflict surrounding human rights to the philosophical controversies about their moral foundations or metaphysical status. This pervasive assumption has for decades helped to propel the now rather tired debate about the “universality” of human rights. While there have been some very impressive intellectual fireworks on display in this debate, they have typically generated more heat than light. Partly as a result, the view that conflict about human rights originates in philosophical disagreements remains largely unchallenged, leaving us in the dark with respect to our understanding of the politics of contestation that human rights engender.

My aim in this essay is to illuminate this politics of contestation by offering an alternative ontology of human rights. Human rights are not, I shall argue, propositions about moral truth. To view them as such is to misapprehend what people do in claiming human rights and to mistake the struggles that these claims initiate for disputes about morality. Treating human rights as truth claims also makes it difficult to understand their global appeal and their sociocultural “origins” and to grasp the distinctive ways in which they are sometimes (mis)used as tools of domination. I shall argue that human rights are *political demands*—specifically, demands for emancipation, for an end to domination and oppression. As such they are highly partisan or ideological in character—a fact which, I maintain, is central to understanding the politics of contestation that frequently accompanies human rights and to resolving several important and seemingly intractable theoretical debates about them.

## What Are Human Rights?

Much of the theoretical literature on human rights treats them as claims about moral truth. This is most obvious in the extensive debate over the “universality” of human rights. Both sides in this debate accept (if only implicitly) that human rights claims are truth claims; they differ primarily over whether the purported moral truths are in fact universal. This ontological assumption permeates an extensive literature seeking to “ground” human rights—by deriving them from higher moral truths, construing them from an appropriately constructed initial choice situation, matching them with our moral intuitions, demonstrating their role in satisfying needs or enhancing capabilities or promoting welfare or autonomy, and so on.

Figuring out what human rights “are” in this moral sense is supposed to help determine who is obligated by human rights claims, whose duty or responsibility it is to satisfy them. That all rights must imply or entail clearly assignable duties has become a shibboleth among rights theorists in politics and philosophy, who dutifully litigate the work of early 20th-century jurist Wesley Hohfeld on this point (see Hohfeld 1919). Why the structure of legally institutionalized rights should determine our thinking about all of the sociopolitical phenomena that the term “rights” comprises remains mysterious to the uninitiated. Bowling to Hohfeld has become a ritual that, like most rites, often substitutes for critical thinking on the matter. This is not to deny that questions of responsibility for rights are important; it is rather to challenge whether the legal model of correlative duties or perfect obligations is the best or most useful framework for thinking about it.

That human rights claims are claims about moral truth is an idea that perhaps only a theorist could love. I shall leave aside for now my broader concerns about the underlying moral realism that this view reflects. On the face of it, that people marching in defiance of martial law, demonstrating for the release of political prisoners, or striking to achieve humane working conditions see themselves as making assertions about moral truth seems far-fetched. It borders on ludicrous to imagine that those who resist such demands do so because they interpret the relevant moral facts differently. Rather, these claims, and the struggles they provoke, are inherently *political* or *politicized*—that is, they concern power and privilege, domination and oppression.

Neil Stammers argues that rights operate both instrumentally—, as challenges to existing agents, sites, and structures of power; and expressively, as challenges to sociocultural manifestations of power relations in everyday life. Thus, rights claims can function as political, economic, or social demands; or they can be demands for recognition of alternative norms and values or individual or group identities (Stammers 1999: 987–988). Crucially, in both cases, human rights claims challenge power in its myriad forms.<sup>1</sup> I shall focus on the former, more conventionally political, uses of rights in this essay. While the language

<sup>1</sup> Human rights discourses can also sustain power; see Chandler 2001.

of emancipation, and of domination and oppression, is more apposite in this political domain, I think the arguments that follow hold for human rights claims more generally.

Human rights claims are political demands in the broadest sense. They are normative claims—claims about how things *should be*—but that is not the same as saying that they are claims about moral truth.<sup>2</sup> They reflect the conviction that all people should be treated as moral equals entitled to certain essential freedoms. To invoke human rights is to challenge the order of things, to confront structures of power and privilege, “natural” or arbitrary hierarchy, with the unshakable belief in freedom and equality for all. In this way human rights are partisan or ideological. They take a particular side and reflect a particular perspective—that of the weak, the abused, the marginalized, the downtrodden. This view is ideological because it reflects not some moral truth but rather a particular set of values and commitments. It is a matter of conviction; it appears to be a moral truth claim, I suspect, because of its inclusive or “universal” logic.

This way of understanding human rights is at once empirical and normative. It is empirical insofar as it captures something about what people do with human rights. But this description is itself normatively laden. It already presumes that human rights are *for* something: for challenging extant instantiations of power, for achieving emancipation, for ending domination and oppression. Human rights were invented around the 17th century to challenge the domination and oppression that suffused medieval and early modern societies in the forms of inherited monarchy and aristocracy, patriarchal and ecclesiastical privilege, and rigid social and economic hierarchies (cf. Minoque 1979). This leveling and emancipatory thrust has from the beginning shaped intersubjective understandings—shaped the discourse—of human rights. Their positive normative valence cannot simply be read off from practice, since certain uses of human rights contravene it; yet any account of human rights that ignores it is lacking. We cannot understand the practice of human rights, as I shall argue below, without accounting for their normative dimension.

Claiming human rights, then, is not to speak truth to power (for that would imply that human rights claims are truth claims), but rather to confront the ideology of arbitrary power and inherited or exclusive privilege with the ideology of freedom and equality for all. This ideology and the values it expresses are useful for the weak because they provide an argument for curbing the power of the strong.<sup>3</sup> Importantly, the values need not be consistently held in order to be effective—by which I mean that arguing for *my* emancipation on the basis of freedom and equality for all does not require that I sincerely believe or have as my motivation the view that *everyone really is or should be* free and equal. Still, these values make it hard for me to deny arguments couched in similar terms: as Gunnar

<sup>2</sup> On this point, the moral realists are mistaken. However, noncognitivist are too reductionist in assuming that normative claims are therefore merely assertions of opinion, preference, or desire. It is possible to make strong—indeed, compelling—arguments about right and wrong even if these arguments are not truth-apt. Unfortunately, I cannot pursue this here.

<sup>3</sup> Nietzsche saw this clearly—though he took a rather dim view of it.

Myrdal famously predicted, a civil rights movement in the United States was likely to succeed not because white Americans truly believed in equality, but because they believed they believed in equality and would thus find demands couched in the language of rights difficult to deny (Myrdal 1944). Indeed, most successful human rights movements have been partial: they have agitated for the recognition of the specific rights of a particular group of people. This fact might be troubling if we understood human rights as a kind of moral truth; for a political or ideological account, it merely reinforces that many different people find the logic of human rights useful and appealing.

If the view that to invoke human rights is to engage in a struggle over power and privilege is correct, we should expect human rights to be contentious in two distinct ways. First, because they represent a demand that people give up arbitrary power and inherited or unjustified privilege, they will be ideologically contentious. Those who enjoy power and privilege will fight hard to maintain them. Conflict is thus intrinsic to the struggle over human rights, but the contention originates not in metaphysical questions but rather in quite mundane and material ones. How should wealth and privilege be distributed? Who should have power and what limits should there be on its exercise? Human rights are one, partisan answer to such questions. The truth is, of course, often invoked on both sides: advocates of human rights will talk about autonomy, natural equality, or god-given rights, while their opponents will claim that monarchs, husbands, priests, and property owners rule by divine right, ancient tradition, or the natural order of things. These differing views of “the truth” are not the source of contention; rather, competing versions of the truth are invoked in support of ideological positions.

Human rights are contentious in another way as well. Even among those who subscribe to the ideology of human rights, conflicts will arise over the meaning of emancipation (think of this as an “internal” conflict, in contrast with the “external” conflict reflected in clashes between human rights and rival ideologies). The distinction between these two types of contention is tricky: Narrow and limited definitions of human rights often reflect power and privilege at work and operate to reinforce and perpetuate them (Stammers 1993). Still, there is room for legitimate disagreement over the meaning of emancipation and about what rights are required to achieve it.

The differences between the political account of human rights and various moral realist accounts that regard them as truth claims should by now be clear enough. Before turning to the epistemological implications of this view, I briefly want to contrast it with some prominent contemporary accounts of human rights, as a way of clarifying and amplifying the distinctions and arguments advanced thus far.

The first contrast I want to draw is with the view that people only properly have rights when these represent effectively enforceable claims—when they are institutionalized. Rights need to be more than formal entitlements, on this view, to be of practical benefit to those who hold them. To claim a right that is not “real” in this sense will be disappointing and insulting to the claimant (James 2005). Moreover, some scholars doubt whether any “positive” rights—social and economic or “welfare” rights—can truly be

human rights, since it is incoherent to imagine that everyone has an obligation to feed or educate everyone else. “Negative” rights, however, do seem to create perfect obligations for everyone to refrain from killing, torturing, etc. (O’Neill 2008). Both of these views share in the Hohfeldian fundamentalism discussed earlier: the former, through a kind of legal or institutional positivism about rights; the latter, in the arbitrary insistence on correlative duties or obligations.

I cannot offer careful analyses of these views here, but I do want to point out that each, in a different way, fails to account for what Jack Donnelly has called the “possession paradox” (Donnelly 2003: 9). Donnelly argues that people are most likely to claim their human rights in precisely those instances when they are not enjoying them—i.e., when those rights are not legally recognized or institutionally guaranteed, or when it is not clear who is obligated to fulfill the rights. On the “effectively enforceable claims” view, these people are only setting themselves up for insult and disappointment. On the “perfect obligations” view, they are misguided in thinking that they have rights of the relevant kind. Again, perhaps only a theorist could believe that protestors risking beatings, imprisonment, and worse to demand access to food or democratic reforms are mistaken in thinking that their claims are coherent. The political account I have sketched sees people making such claims as insisting precisely that their normative demands—for an end to (usually some quite specific instance of) domination and oppression—be recognized and respected. Less theoretically, they are demanding that the powerful get the boot off their necks. These demands often include calls for legal and institutional change. Donnelly (2003: 12) insightfully notes that human rights claims intend to be self-liquidating in this sense. But human rights are typically claimed when things are not going well, as a last resort. The people who claim them are not confused or theoretically unsophisticated. More commonly, they are desperate and determined to do something to improve their situation, and human rights are one tool that can help them.<sup>4</sup>

My approach can usefully be distinguished from recent “political” approaches to human rights. Unlike “philosophical” approaches, which “ask what [human] rights are, why we have them, what they are based on, how they can best be justified, which are most fundamental, and so on,” these political approaches emphasize the sufficiency of an overlapping consensus on human rights, focusing on their institutionalization and effective protection (Ingram 2008: 402; cf. Taylor 1996). Foundational arguments are eschewed as unnecessary—and perhaps counterproductive—in securing rights and preventing their violation (see Bobbio 1996; Ignatieff 2001). This political turn is welcome, yet I question whether, at bottom, it is really political. Rather than rejecting the idea that human rights reflect moral truth, these accounts simply bracket the question of which moral

<sup>4</sup> This highlights the circularity in James’s account: the only benefit she imagines from claiming a right is legal enforcement of that right; hence any rights claim that is not legally enforceable cannot be beneficial. I can see no non-question begging reason to limit our understanding of benefit in this way: rights claims might, for instance, foster solidarity, sustain identity, shift political discourse, or mobilize support.

truth they reflect.<sup>5</sup> Put differently, these political approaches treat the fact of consensus on rights as an alternate foundation for their moral authority. As soon as that consensus breaks down—which is to say, as soon as rights become contentious—this bedrock turns to sand.

My account also differs from Charles Beitz's recent effort to anchor a conception of human rights in an analysis of their international practice (Beitz 2009: 102). Beitz argues that human rights are not a fundamental moral category; we have different reasons for caring about different rights, he says, and there is no single, more basic value on which all rights rest (Beitz 2009: 129). So for him, "human rights are the constitutive norms of a global practice whose aim it is to protect individuals against threats to their most important interests arising from the acts and omissions of their governments. . . ." (Beitz 2009: 197). Beitz's approach has much to recommend it, but its empirical focus is too narrowly on the (positive) international practice of human rights—on the UN system, international NGOs, and so on. Further, he still defines rights analytically, according to the importance of the interest at stake, the value of state protection of that interest, and the level of international concern arising when the interest goes unprotected (Beitz 2009: 136–137). This definition might be inductive, but it reflects a particular understanding of rights practice into a contestable criterion of legitimacy.

A similar empirical problem underlies the approach of scholars like Wilson (2001) whose focus on the social life of rights reveals a great deal about how human rights are used but is unable to differentiate between their use in struggles for emancipation and their *misuse* as tools of domination and oppression. The idea that we can differentiate between use and misuse of human rights itself reflects the conviction that human rights are *for* something. A properly political or partisan understanding of human rights clarifies this important distinction while also explaining rights' particular susceptibility to misuse, a point I return to in discussing epistemological questions, below.

#### How Should We Understand Human Rights?

Treating human rights claims as truth claims creates several epistemological puzzles that the political view presented here resolves. The first, and perhaps most important, concerns the global appeal of human rights. On the moral realist view I have been criticizing, for human rights to be globally appealing would mean that their underlying moral foundations were universally accepted. Facts about the world contradict this formula in a way that perpetuates the debate on universalism by providing ammunition to each side. Human rights do have global appeal, but there is no obvious shared moral foundation upon which it rests.

<sup>5</sup> Apathan (2001: 106) describes these theories as embracing "many metaphysics" rather than no metaphysics.

In response, relativists stress moral diversity while typically explaining away the global appeal as exaggerated, a product of Western hegemony, a ruse, and so on. Inconveniently for the relativists, people in places who aren't supposed to be moved by the lure of human rights continue to show themselves to be so moved—as I write, the "Arab Spring" of 2011 is an unfolding example. Universalists emphasize global appeal while redoubling their efforts to discover its universal moral basis, often turning to procedural arguments about what people would or should accept in the absence of plausible accounts of what they do accept. Embarrassingly, universalists don't agree among themselves what it is that is supposedly the object of universal agreement, turning the comedy into farce.

The political account offered here sees the global appeal of human rights as a function of their ideological character, of what they are *for*. What they are *for*, again, is emancipation, an end to domination and oppression. Human rights have global appeal because domination and oppression are global phenomena. This explains why human rights can be appealing to so many people even though they mean somewhat different things to different people at different times and places: domination and oppression are, after all, as diverse as the contexts in which they occur. The political account also shows why agreement on human rights is an inappropriate and misleading standard to apply in thinking about their appeal and legitimacy: the partisan nature of human rights dictates that they will never be universally accepted or acceptable. This does not preclude our thinking that human rights are normatively desirable—that monarchs, husbands, and masters belittled, leveled, decried, ungodly and unnatural doctrines of equality, and asserted their divine or natural title to rule does not and should not persuade us that claims for freedom and equality were invalid or illegitimate. Again, the appeal of human rights is not to do with their status as moral truths, but rather with the ideology they embody. The point of human rights is not to reach moral agreement; it is rather to challenge the dominant ideology. That that ideology frequently struts about in the costume of morality helps to explain why conflicts over human rights can be easily mistaken for conflicts over moral truth.

These insights point toward a resolution of one paradoxical feature of the "rise and rise" of human rights: their emergence as global standards of legitimacy and a global normative framework has played out against a backdrop of continued resistance to human rights claims by governments and other actors all over the world. If human rights were truth claims, their ascendance should be correlated with decreasing resistance to them. The evolution of human rights should on this view reflect some sort of moral progress or dawning enlightenment. Instead, human rights are as actively resisted as they always have been and probably always will be, and for the same reasons.

A second important epistemological puzzle resolved by this view is the puzzle of the Western "origins" and character of human rights. The association of human rights with a distinctively Western outlook, culture, or philosophy obscures the extent to which they were, and remain, deeply contentious within Western societies (Goodhart 2003;

Howard 1995). Racial and gender equality, social and economic security, and toleration remain fundamentally contested issues in Western societies, as they have been for the past four centuries. Moreover, tremendous diversity remains among Western interpretations and implementations of various human rights. Resistance to the ideology of human rights, whether within the West or outside of it, is the resistance of those with power and privilege to doctrines that would limit that power and privilege. There is much more similarity between the West and “the Rest” than many scholars typically recognize in this connection. In the West, a Whiggish historical sensibility deceives us into believing that our culture somehow embraces or embodies human rights, eliding the struggles of oppressed people and the perfidy of the ruling classes. At the same time, a well-meaning will to toleration—or perhaps simply an unconscious sense of our superiority—leads too many of us to condone treatment of others that we would never accept for ourselves.

This misunderstanding is related to a broader confusion about the significance of the origins of normative claims like human rights. That human rights originated historically in the West tells us little about their value, their validity, or their appeal within the West or beyond it. The essentialist thesis linking validity to culture is untenable precisely because it mistakenly affirms a version of moral realism. As political claims, human rights are socially constructed; their meaning varies in different contexts and is profoundly shaped by the social forms of power they confront. Their validity is thus an intersubjective phenomenon rather than an objective fact that can be evaluated independently of what people actually think and do.

The socially constructed nature of human rights claims provides a segue to discussion of a third epistemological puzzle, one concerning their misuse. There is no denying that human rights are used as tools of domination and oppression, as well as being used to defend dignity, demand empowerment, and fight for social justice. Human rights are sometimes deployed or operate to serve the interests of the powerful and privileged. Within communities, this can take the form of human rights discourses that marginalize some people, enforce existing social hierarchies, or impede outsiders or disempowered people from articulating their grievances or advancing their aims. Internationally, human rights can become tools of domination, providing rhetorical cover for powerful states’ self-interested actions and justifications for interference or intervention. Institutionalization of human rights at any level tends to insulate the status quo from demands for reform and provide a potential instrumentality for oppression.

A common reply to such charges is that no concept is immune to abuse (I have argued this myself; see Goodhart 2008). Indeed, some scholars maintain, with Rochefoucauld, that hypocrisy is the homage that vice pays to virtue (Ingram 2008). Such responses, I now think, are themselves deeply implicated in the moral realist framework that I am questioning here, one that makes “abuse” relative to the moral truth of human rights claims. They also provide little purchase on why and how human rights are (mis)used in such ways, and why these (mis)uses are effective.

Social constructivist approaches, like those common in sociology and anthropology, seemingly do better in accounting for the variety of uses of human rights. Descriptive approaches focusing on who uses human rights how, when, in what contexts, and in whose interests (Morris 2006, 11, cited in Short 2009) reveal the diversity and complexity of what Richard Wilson calls the “social life of rights,” which includes the myriad intentions of different social actors using human rights in various contexts and with quite divergent social meanings (see Goodale and Merry 2007). The incontrovertible fact that human rights are used as tools of domination and oppression, combined with a social constructivist ontology of human rights, leads many students to question whether it is valid or meaningful to talk about the “misuse” of human rights at all.

Social constructivist ontologies provide invaluable insight into the multiplicity of human rights practices, but they are flawed in two important respects. First, they make it difficult to account for the global appeal and legitimacy that human rights enjoy, attributes hard to fathom without some reference to the positive normative valence human rights carry. Second, that human rights are sometimes used in ways that serve power, that they can become instruments of domination, often engenders or betrays a deep normative skepticism about human rights. This skepticism aligns social constructivist accounts of rights “against” normatively laden understandings of them. Yet this skepticism seems to violate key epistemological premises of social constructivism itself by obfuscating or explaining away the social fact that human rights *do* carry a positive normative valence; to many people around the world, human rights signify emancipation, social justice, or the quest for human dignity.

I think social constructivists often lapse into skepticism because they find no social or empirical evidence that human rights are “true”—that they really are about freedom or equality. Indeed, social constructivism eschews truth; it is predisposed against moral realism, emphasizing instead meaning in context. But norms and ideas do matter: as constructivists in political science have shown, norms and ideas can be socially effective irrespective of their truth status (for the classic theoretical account see Wendt 1999; on human rights, see Sikkink 1998). The power of norms is itself an important intersubjective social fact in need of explanation. My political account seeks to understand the social fact of the broad appeal of human rights norms and discourse. It hypothesizes that this appeal stems from the usefulness and effectiveness of human rights as challenges to power.

If this view is correct, it should be possible to recruit a social constructivist epistemology in explaining the distinctive normative character of human rights as well as the particular “misuses” of human rights alluded to earlier. For example, we need to ask why actors seeking to assert or maintain arbitrary or unjustified power should employ human rights discourse as a tool. Why, for instance, don’t they simply articulate their sincere beliefs about ethnic, religious, or social superiority? The answer must be that there is some advantage to be gained by using the language of human rights. That advantage must derive from the fact that people typically understand human rights positively, as demands

on behalf of the weak and disadvantaged. If human rights were seen largely as tools of power, there would be no advantage to the powerful in appropriating human rights discourse. To amend Rochefoucauld, hypocrisy may simply be the use the vicious make of virtue. Still, the association with virtue remains essential. If we simply treat all uses of human rights as equally constitutive of their social meaning, such explanations become unavailable; human rights would be less effective distractions precisely because they would lack moral resonance. That is not to say that the social meaning of human rights is somehow divorced or insulated from the social practice of human rights; it is rather to point out that the intersubjective dimension of human rights represents an important aspect of their social life that requires careful attention.

The political perspective also suggests that such misuse of human rights is actually a double-edged sword for the powerful and privileged; using human rights as rhetorical cover, or co-opting human rights discourse for the purposes of dominating or oppressing others nonetheless has the effect of reinforcing the legitimacy of the discourse itself, even as the particular deployment contradicts and undermines it: the “Helsinki Effect” is one of the best-known examples of this.<sup>6</sup> Indeed, repeated *abuses* of human rights—understood as uses counter to the ideology of emancipation that animates human rights claims—appear not to have undermined the global human rights discourse and may even have strengthened it.

The political approach I am advocating accepts that human rights claims are not truth claims; at the same time, it insists that human rights can and do carry a positive normative valence, one evidenced in their widespread appeal and legitimacy. This appeal and legitimacy must be regarded as social facts in need of explanation. My hunch is that any such explanation will incorporate a more discursive understanding of the intersubjective meaning of human rights as they are used in challenging power in various contexts.<sup>7</sup>

#### If Human Rights Aren't Truth Claims, Can We or Should We Endorse Them?

Of the many objections this account is likely to provoke, one speaks directly to its central and most radical argument: by abandoning the pretense to truth, critics might worry, this account undercuts any grounds for endorsing or advocating human rights. If we cannot know that human rights are true, we cannot plausibly approve or assert them.

This worry reflects a broader moral realist concern about the role of truth and certainty in morality. Again, without undertaking a critique of moral realism, let me try to clarify my position and to put the differences between the political and moral realist

accounts into sharper contrast. If we think of human rights as political rather than moral claims, we can view our commitments to them similarly. Few of us hold that our advocacy of, say, progressive or conservative political causes reflects a judgment about the truth of those causes. We tend rather to believe that in politics our values and interests combine in complex ways to inform our thinking and actions. We find ourselves *committed* to certain principles not because we can demonstrate their truth but rather because they seem to us *right, just, compelling, inescapable*. Our commitment to these principles is no less sincere, intense, or justifiable for being in some sense contingent (see Rorty 1989). We have to ask, with Rorty (1993: 117), whether the appeal to moral knowledge has been causally effective in achieving their realization. Human rights are a vocabulary that people find useful; there is nothing gained by trying to get underneath this fact (Rorty 1993: 115).

Put another way, our commitment to human rights is palpably different from our commitment to the Pythagorean theorem. The latter is grounded in logical and empirical truth, while the former is more visceral and, we understand, more contentious. This contentiousness, I have argued, arises precisely out of the challenge to power that human rights represent. It has nothing to do with a lack of conviction regarding the justice of human rights. To advocate human rights is not to speak the truth, but to have the courage of one's convictions.

Critics might suggest that my account betrays a latent form of moral intuitionism: human rights have prescriptive force because “we just know” that they are closer to the truth. But this is not my position at all. I don't think there is any “truth” that human rights might be closer to. Human rights are prescriptive because they carry the normative power of the principled convictions of their advocates. Their prescriptive force is a function of how useful and appealing people find those principles. That is not to say that human rights are simply whatever people claim they are. As I have argued, shared understandings of human rights constitute and delimit their meaning. These understandings are dynamic and inherently contentious, but they are not infinitely malleable. The meaning of human rights has remained remarkably resilient over time, especially given their promiscuous use. The human rights label can be put on just about any package; my point is that people can usually tell when this constitutes false advertising. We should, however, expect and accept that there will be sincere disagreement about some cases.

These brief remarks might not assuage the fears of moral realists, for whom the truth of human rights is central to their appeal. One might reasonably ask them two questions. The first is whether the failure to identify an objective or widely shared moral foundation for human rights has impeded real and important practical progress on human rights (Bobbio 1996: 9–14). The second question is whether the failure to discover any such foundation so far doesn't leave them in the same performative position I have just sketched, one that requires action based on conviction rather than proof.

<sup>6</sup> The 1975 Helsinki Accords publicly committed Soviet bloc countries to international human rights obligations. Local “Helsinki Watch” groups formed in many of these countries to monitor and protest the human rights performance of their governments. What began as lip service by these governments to ideals they had no intention of honoring ultimately contributed powerfully to social and political transformation; see Thomas 2001.

<sup>7</sup> The role of social movements is crucial here; see Stammers 2009.

## Conclusion

I have sketched a political account of human rights that treats them as ideological claims for emancipation. In this view, human rights claims are not claims about moral truth, but they do carry a positive normative valence—at least for those enduring domination or oppression. Their global appeal and legitimacy are functions of what human rights are for; this partisan character of human rights makes them inherently contentious. This contention exists wherever human rights claims are advanced—in the West as well as elsewhere. Because they challenge power and privilege, human rights meet resistance across different cultures, religious traditions, and economic systems.

Empirical study of the social practices surrounding human rights reveals that they are sometimes used as tools of domination and oppression. Such uses of human rights can be seen as “misuses” insofar as they operate counter to the ideological thrust of emancipation and the intersubjective meaning of human rights based upon it; the effectiveness of misuses of rights trades on their exploitation of the positive normative valence that human rights carry. Despite such uses, human rights have remained resilient, retaining their positive social meaning and their appeal.

That resilience is not, however, a given. One of the most enduring contests over the meaning of human rights remains that between advocates of what I have called a neoliberal or neo-Lockean understanding of human rights and a broader, more emancipatory definition of them (see Goodhart 2003). A brief consideration of this example nicely illustrates and recapitulates the main issues I have discussed here.

The neoliberal version constructs human rights narrowly and emphasizes a conception of property rights that sharply curtails other social and economic rights. It serves as a tool of the powerful and privileged to ensure their position, employing the discourse of human rights in an effort to justify neoliberalism’s social and political implications. This view of human rights has been put into social practice through Reaganism and Thatcherism in the developed countries (a process newly reinvigorated thanks to the alleged debt crisis following the Great Recession of 2008) and through IMF structural adjustment programs and other instrumentalities in developing countries. It has elicited sharp condemnation from advocates of social justice, some of whom view it as discrediting the idea of human rights, others of whom see it as a misuse of that concept. Yet human rights remain popular globally, despite their association with neoliberalism, and have been a powerful tool in countering it.

It is conceivable that this neoliberal understanding of human rights could become dominant. If it did, human rights would no longer be worth defending by those who subscribe to an emancipatory ideology. Should this transpire, however, I would expect some other concept would be invented to do the political work that the broader conception of human rights presently does. Perhaps that conception could be more effective than human rights—though the unprecedented convergence on human rights as the normative discourse of global politics makes this unlikely in the short run. The main

points are that as the social meaning of human rights evolves, so does their appeal and their efficacy; that appeal and efficacy, in turn, are functions of the social and political work that human rights do.

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### 3 Why Act Towards One Another "In a Spirit of Brotherhood"? The Grounds of Human Rights

Michael J. Perry<sup>1</sup>

"ALL HUMAN BEINGS... should act towards one another in a spirit of brotherhood." So says Article 1 of the Universal Declaration of Human Rights (UDHR). But *why*: What reason or reasons do we—"all human beings"—have for "act[ing] towards one another in a spirit of brotherhood?"

A principal way for us to "act towards one another in a spirit of brotherhood" is for us to try to get not just our own government but every government to treat its citizens and others with whom it deals "in a spirit of brotherhood." What reason or reasons do we, the citizens of one country, have for making it our business how the government of every other country treats its citizens and others?

Before the Second World War, it was no part of the proper business of the government of one country, insofar as international law was concerned, how the government of another country treated its citizens: "Until World War II, most legal scholars and governments affirmed the general proposition, albeit not in so many words, that international law did not impede the natural right of each equal sovereign to be monstrous to his or her subjects" (Farer 1993:240). Today, by contrast, it is a matter of international concern—as the UDHR, various human rights treaties, regional as well as international, and the recent

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