What Future for Human Rights?

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Like people born shortly after World War II, the international human rights movement recently had its sixty-fifth birthday. This could mean that retirement is at hand and that death will come in a few decades. After all, the formulations of human rights that activists, lawyers, and politicians use today mostly derive from the UN Universal Declaration of Human Rights, and the world in 1948 was very different from our world today: the cold war was about to break out, communism was a strong and optimistic political force in an expansionist phase, and Western Europe was still recovering from the war. The struggle against entrenched racism and sexism had only just begun, decolonization was in its early stages, and Asia was still poor (Japan was under military reconstruction, and Mao's heavy-handed revolution in China was still in the future). Labor unions were strong in the industrialized world, and the movement of women into work outside the home and farm was in its early stages. Farming was less technological and usually on a smaller scale, the environmental movement had not yet flowered, and human-caused climate change was present but unrecognized. Personal computers and social networking were decades away, and Earth's human population was well under three billion.

When we read the Universal Declaration today, however, we find that it still speaks to many if not all of our problems. It addresses torture; detention without trial; authoritarian regimes that restrict fundamental freedoms and punish political participation; discrimination on grounds of race, gender, and religion; and inadequate access to food, education, and economic opportunities. Further, its norms have been embodied in international treaties that are widely accepted. The 1966 UN International Covenant on Civil and Political Rights, for example, has been ratified by 167 countries and entered into force in 1976. The European and Inter-American courts of human rights have developed large bodies of innovative

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jurisprudence addressing issues such as terrorism, privacy of home and family, and the land claims of indigenous peoples. And specialized treaties have applied human rights principles to the problems of minorities, women, migrant workers, children, and the disabled. So perhaps human rights will be like the U.S. Bill of Rights and survive for centuries—albeit with many amendments and reinterpretations.

A Comprehensive Conception of Human Rights Practice

To think about the future of human rights we need to take into consideration all the main dimensions of human rights practice. The field of human rights covers many different beliefs, norms, institutions, and activities, and these may well have different futures. Most obviously, there are several dozen specific human rights (the right to a fair trial, the right to freedom of peaceful assembly, the right to education, and so on), and future events and developments can affect these differently. Some may flourish while others wither—along with the social movements that support them. Beyond this, there are at least five different dimensions of human rights, and these also may have different futures.

1. *Ethical Beliefs and Attitudes*. The oldest part of human rights is a distinctive set of ethical and political beliefs about the responsibilities of individuals and governments that go back to ancient times. Broadly, they hold that all people everywhere are entitled to special respect and protection in areas of life where their welfare, freedom, equality, and dignity are particularly vulnerable. When people talk and argue about this idea and its applications, we get human rights discourse. Moral philosophers and historians of ideas often take this dimension of human rights to be the main story, but I suggest that it is just one important part of the story along with several others.[1] The idea of universal human rights has never won universal assent and commitment, but it is widely held, continues to gain adherents, and is very unlikely to disappear even if its popularity and institutional dimensions decline.

2. *Action and Activism*. Another dimension of human rights is action to bring problematic institutions and practices into line with our conceptions of human rights. Such action and activism can be by individuals, groups, or organizations such as NGOs. The anti-slavery, labor, and women's movements are examples of such activism—ones that began before there was much use of the phrase "human rights." Nowadays such activism occurs all around the world and is supported by well-funded NGOs, by international organizations such as the United Nations, and by large bodies of human rights law.

Activists are often the face of human rights, and accordingly they tend to think of themselves, and to be perceived by others, as the whole of the human rights movement. An extreme example of this is a recent article by Stephen Hopgood in which he largely equates the future of human rights with the future of human rights NGOs.[2] The disappearance of action and activism guided by human rights beliefs and norms seems very unlikely, although there will surely be ups and downs.

3. *Human Rights Law*. Treaties, court decisions, and national enactments have created a substantial body of human rights law in the last sixty-five years. In Europe, for example, a person who cannot get a remedy at home for human rights violations suffered can appeal to effective international courts. Further, the International Criminal Court, which has jurisdiction in many countries, stands ready to impose criminal sanctions on leaders who engage in very severe human rights violations. Nevertheless, legal formulations of human rights often have large areas of indeterminacy, are poorly implemented, and remain far from realization.

Allen Buchanan has recently argued that the "heart of human rights" is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966).[3] These three documents are often called the "International Bill of Rights," and I do not dispute their importance for law and practice. But even if international law is the heart of human rights, there are other essential organs that must be monitored to assess the health of human rights.

Human rights are institutionalized in international law and sometimes even deeply entrenched, and that gives them strength to endure. Still, a severe international crisis such as a major war, a worldwide epidemic, a severe economic depression, or a massive environmental disaster—perhaps caused by climate change—could divert energy and resources to other concerns. In such a scenario, governments could take legal human rights even less seriously than many of them currently do.

4. *Political Role*. A fourth dimension of human rights is the role that they play in politics—national and international. This area has significant overlap with the second and third. Serious violations of human rights are now matters of international concern. They are often monitored and criticized by NGOs, condemned by national governments, and discussed in the UN Security Council and Human Rights Council. Further, violating states may be subject to international sanctions

and, in the most extreme cases, to military intervention. Human rights attempt to impose normative limits on national sovereignty, and these limits are—unsurprisingly—often resisted and minimized by governments.

In *The Law of Peoples*, John Rawls took international norms and politics to be the main story about human rights, but there are other important areas as well.[4] The role of human rights in international relations is supported by international law and by international institutions such as the United Nations and the Organization of American States. At least for the near future this gives it a measure of stability. So, too, does ongoing support from powerful countries in Western Europe.

5. *Journalistic and Scholarly Work*. Finally, there is academic and journalistic work on human rights. When I began thinking about human rights in 1973, a visit to a good university library revealed only a handful of books on the subject. Apart from a few pioneers such as Louis Henkin, Joel Feinberg, and Frank Newman, intellectuals were not thinking, teaching, or writing about human rights. It was not until the mid 1970s that journalists started using the language of human rights. Only after human rights had become clearly established as legal and political norms did substantial numbers of philosophers, law professors, political scientists, journalists, and historians turn their attention to the human rights movement. What intellectuals think and write about is notoriously open to fads, and hence this is an area in which rapid change is possible.

These five dimensions of contemporary human rights support and interact with each other. Ethical and political beliefs and attitudes provide a language, a general orientation, and part of the motivation for human rights. Action and activism to promote and protect these rights, often fueled by moral outrage, spreads the beliefs and gives them power. Law is shaped by these ideas and beliefs, as well as by the successes of activism, and it in turn provides guidance to the activism and greater determinacy to the beliefs. The beliefs, the activism, and the established law work in their distinctive ways to shape international politics. Journalists report on human rights abuses, and intellectuals construct theories and histories to help us understand the phenomenon of human rights.

Projecting the Future from the Present

What is happening now is often the best predictor of what will happen in the near future. When applied to human rights, this method is most likely to be reliable

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when the rights are ones that are currently embedded in national and international law and supported by powerful countries, such as the Western democracies, and by large institutions, such as the United Nations. Further, we can have more confidence in predicting stability when the norms are already sincerely accepted by majorities in countries around the world. The good news here is that human rights as we know them are unlikely to die or disappear anytime soon. The bad news (or at least some of it) is that human rights will likely continue to be weakly promoted internationally and will remain far from realized in many of the world's countries. Further, severe poverty in the least developed countries and the presence of powerful authoritarian regimes—such as China and Russia—will continue to be barriers to progress in respecting and protecting human rights.

In general, however, reliance on the present to predict what will happen to human rights in the next decade is very risky. For example, three of the last six decades brought about sharp and unanticipated changes in the fortunes of the human rights movement. In the 1970s great enthusiasm for human rights emerged suddenly and unexpectedly. In the 1990s, after the end of the cold war, enormous growth occurred in human rights norms and institutions. But the first decade of the new century showed that unexpected events such as terrorist attacks and severe economic recessions can draw attention and support away from the human rights movement.

The 1950s and 1960s were tough going for the new international human rights project. As it turned out, 1948 was a bad time to start such an endeavor as the cold war was about to break out, including the eventual hot spots Korea (1950–1953) and Vietnam (1956–1975). Luckily for the human rights movement, the Western Europeans moved ahead with the European Convention on Human Rights (1950). The court created by that treaty, the European Court of Human Rights in Strasbourg, proceeded to prove that the international adjudication of human rights complaints is workable. The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were approved by the UN General Assembly in 1966, as was the Convention on the Elimination of All Forms of Racial Discrimination. And the international struggle against apartheid in South Africa emerged in the mid-1960s and successfully enlisted the United Nations in its cause. These achievements represented slow, steady growth in the areas of activism, law, and diplomacy. Still, as Samuel Moyn has argued, the human rights movement was not moving rapidly ahead during this period, and did not attract much popular or journalistic

attention.[5] Further, the well-publicized student protests and riots that broke out in many countries in the late sixties and early seventies did not use the language of human rights.

Unexpectedly, however, human rights bloomed and caught people's attention in the seventies—and particularly in 1977–1978. The Committee on Human Rights in the USSR was founded in 1970, and two members of this group, Andrei Sakharov and Aleksandr Solzhenitsyn, became internationally famous dissidents. The Helsinki Accords, which the Soviet Union sought as a way of ratifying the postwar division of Europe into Eastern and Western spheres, were approved in 1975. These accords had human rights provisions that led to the formation of Helsinki Watch committees in Moscow and Eastern Europe to monitor compliance. Inspired by these efforts, a Helsinki Watch NGO was formed in the United States in 1978, and eventually evolved into Human Rights Watch. Founded in 1961, Amnesty International emerged as a powerful human rights NGO during the seventies—and received the Nobel Prize in 1977.

Jimmy Carter was elected U.S. President in 1976 on a platform of respecting and promoting human rights. In his inauguration speech he said that the American "commitment to human rights must be absolute." Later, Secretary of State Cyrus Vance set out a human rights agenda for foreign policy in his Law Day speech of 1977. The Carter administration's commitment to human rights made a difference in U.S. policies toward a number of authoritarian regimes, including those in Argentina, Brazil, Chile, Nicaragua, Poland, the Philippines, South Africa, and the Soviet Union. This commitment also helped democratize the Left in many European and Latin American countries. The Women's Movement was also taking off during this period, and in 1978 the innovative UN Convention on the Elimination of All Forms of Discrimination against Women was approved. Taken together, these developments went far beyond anything that was happening in the field of human rights in the previous decade.

The Berlin Wall fell at the end of 1989 and the cold war ended shortly thereafter. This easing of international tensions, along with the pent up demand for stronger human rights measures, led to the rapid development of human rights law and institutions in the 1990s. The creation of the post of High Commissioner for Human Rights within the United Nations is one of these achievements. The International Criminal Tribunals for the former Yugoslavia and for Rwanda responded to the dark side of the decade: war and ethnic cleansing in the former Yugoslavia and massive genocide in Rwanda. The coming into

operation of the International Criminal Court in 2002, with an independent prosecutor, was the fulfillment of a dream that some people had nourished since the Nuremberg Trials.

If the seventies and nineties teach the lesson that rapid and unanticipated progress can occur in the law, politics, and popular acceptance of human rights, the first thirteen years of the new millennium suggest that rapid and unanticipated regress is also possible. The terrorist attacks on New York City and Washington, D.C., the subsequent "war on terror," and the wars in Iraq and Afghanistan were disasters for human rights. Both the United States and Britain detained suspected terrorists without trial, and the United States made widespread use of torture and cruel treatment. Further, the long and severe recession that began in 2007 spread to many parts of the world, undermining social and economic rights. The first decade of the new millennium also saw the emergence in Europe of strong conservative challenges to human rights and particularly to some of the decisions of the European Court of Human Rights. And a major backlash to the International Criminal Court occurred among African leaders in response to the ICC's nearly exclusive focus on crimes in African countries.[6]

To sum up, although slow, incremental growth in the various dimensions of human rights has been occurring since 1948, we should not assume that this is the most likely pattern for the future of human rights. Both progress and regress can occur quickly.

Formulations of Human Rights

Human rights always come to us in lists. They address a variety of specific problems, such as unfair trials, severe restrictions on personal freedoms, suppression of political dissent, racial discrimination, and severe poverty. Unsurprisingly, different people and political factions endorse somewhat different lists with varied priority rankings. Nevertheless, international law uses a standard list that mainly comes to us from the Universal Declaration of Human Rights. This list consists of seven families of human rights, the first six of which are found in the Universal Declaration:

1. *Security rights that protect people against murder, torture, and genocide.*
2. *Due process rights that protect people against arbitrary and excessively harsh punishments, and require fair and public trials for those accused of crimes.*

3. *Liberty rights that protect people's fundamental freedoms in areas such as belief, expression, association, and movement.*
4. *Political rights that protect people's liberty to participate in politics by assembling, protesting, voting, and serving in public office.*
5. *Equality rights that guarantee equal citizenship, equality before the law, and freedom from discrimination.*
6. *Social rights that require that people be provided with education and protected against starvation and severe poverty.*
7. *Minority and group rights that protect women, racial and ethnic minorities, indigenous peoples, children, migrant workers, and the disabled.*[7]

As suggested earlier, these families may well have different futures. For example, increasing authoritarianism around the world could mean that security rights endure while the fundamental freedoms and rights of political participation lose ground.

Over the years, changes in the lists of popularly recognized human rights have mainly occurred by addition and growth. Treaty-making and adjudication have created new rights, and existing rights have been expanded. Perhaps some rights have fallen into desuetude, but to my knowledge none have been deleted. The result has been the expansion (some would say proliferation) of human rights, and there is little reason to expect this expansion to end anytime soon. Judges in national and international human rights courts will continue creating new law on an incremental basis, and activists in political movements are likely to keep trying to get their main goals recognized as matters of human rights. Lawyers and theorists will continue to identify new areas of injustice that could be treated as human rights problems (after all, on this planet there are many kinds of injustices to choose from). In response to the expanding lists, philosophers such as John Rawls, James Griffin, and Michael Ignatieff have proposed various forms of human rights minimalism, but activists and lawyers have paid them no heed. The possibility that a better-implemented "less" could be "more" gets little traction in current human rights practice.

Social rights have never received as much attention and respect within international law and politics as the other six families, although the rights to food and education are exceptions to this. Social rights are expensive to realize and sometimes difficult to adjudicate because of the large resources they demand. Further, economists and development specialists are often uncomfortable with rights talk

and doubt the power of moral and legal duties. Since 1990 international energy has increasingly gone into combating severe poverty in the least developed countries, but these efforts have mostly avoided the language of social rights. Rather, they have proceeded under a variety of other banners, including "Millennium Development Goals," "global justice," "capabilities," and "development as freedom."

Popular Support for Human Rights

A long and successful future for human rights will be more likely if their key ideas become widely accepted by both elites and ordinary people in most parts of the world. In recent decades the acceptance of human rights has increased significantly in many countries. Worldwide polls on attitudes toward human rights are now available, and they show broad support for human rights and international efforts to promote them. A December 2011 report by the Council on Foreign Relations surveyed recent international opinion polls on human rights that probed agreement and disagreement with such propositions as "People have the right to express any opinion," "People of all faiths can practice their religion freely," "Women should have the same rights as men," "People of different races [should be] treated equally," and governments "should be responsible for ensuring that [their] citizens can meet their basic need for food." Large majorities of those polled in countries such as Argentina, Azerbaijan, China, Egypt, India, Indonesia, Iran, Kenya, Nigeria, and Ukraine responded affirmatively. Further, large majorities (on average 70 percent) in all the countries surveyed supported UN efforts to promote the human rights set out in the Universal Declaration.[8]

Samuel Moyn offers an explanation of why human rights suddenly bloomed in the 1970s that relies heavily on the idea that by then other utopian ideologies had been discredited and had lost their appeal. Human rights filled that vacuum.[9] This explanation, however, mainly accounts for the evolution of the attitudes of the Left in Europe and the Americas. It does not explain the appeal of human rights to other parts of the political spectrum. For example, Jimmy Carter and Cyrus Vance were certainly not leftists whose socialist dreams were smashed by the demise of communism. Further, the Catholic Church played an important role at that time in supporting and defending human rights in Latin America and Eastern Europe.

The human rights movement will have better future prospects if support from the broad political center continues, and that will not happen if the human rights

platform is perceived as mostly a leftist program. There are at least two tendencies within the human rights movement that promote identification of human rights with the center-left. First, human rights activists tend to be left-leaning and their views influence the big NGOs. Second, politicians on the right in a number of countries tend to avoid human rights discourse. In the United States, most conservatives never really took to the human rights project, and hence abandoned it to the center-left. The Reagan and George W. Bush administrations mostly avoided the language of human rights, preferring instead to talk of freedom, democracy, and rule of law.

From a conservative point of view there are significant reasons to avoid the language of human rights. The biggest, perhaps, is that the long list of human rights descended from the Universal Declaration calls for substantial government action in many areas, including ones in which conservatives would prefer—either on principle or on grounds of frugality and economic sustainability—that governments do far less. Also, conservatives insist on including economic freedoms among the fundamental freedoms—and this is something that the human rights movement has until recently tended to resist. Finally, the human rights movement relies heavily on international law, much of which is centered in the United Nations, and neither international law nor the United Nations is loved by conservatives—particularly in the United States. It would be good for the future of human rights if we could discover ways of making the human rights movement more appealing to the broad political center without throttling activism.

Conclusion

Success in realizing human rights requires hard-to-achieve success in other areas, including building more capable, responsive, efficient, and uncorrupt governments, dealing with failed states, increasing economic productivity (to pay for the protections and services that human rights require), improving the power and status of women, improving education, and managing international tensions and conflicts. Realizing human rights worldwide is a hard job requiring many laborers doing many kinds of work (recall the five dimensions).

Human rights are now more widely accepted than they have ever been. They have become part of the currency of international relations, and most countries participate in the human rights system (albeit often in a hypocritical way). Treaty arrangements and "naming and shaming" by NGOs help encourage and

pressure countries to deal with their human rights problems; and today human rights are sufficiently embedded in beliefs, law, and practice for us to have reason to expect they will be with us for a while longer. Still, the recent history of human rights suggests that sharp turns are possible and that the continuation of slow, steady progress is far from inevitable.

NOTES

[1] Views that take the ethical dimension of human rights as central are often called "moral" or "orthodox" conceptions of human rights.
[2] Stephen Hopgood, "Human Rights: Past their sell-by date," *Eurozine*, July 17, 2013, www.eurozine.com/articles/2013-07-17-hopgood-en.html.
[3] Allen Buchanan, *The Heart of Human Rights* (New York: Oxford University Press, 2013).
[4] John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999). Views that define human rights in terms of their role in international relations are often called "political conceptions."
[5] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass.: Harvard University Press, 2010), pp. 120–75.
[6] For an optimistic view of developments in 2013, see Kenneth Roth's *Foreign Policy* essay, "Silver Lining: The Year 2013 in Human Rights," December 30, 2013, www.foreignpolicy.com/articles/2013/12/30/silver_lining_the_year_2013_in_human_rights.
[7] This list is from James Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell Publishing, 2007), p. 11.
[8] Council on Foreign Relations, *Public Opinion on Global Issues*, www.cfr.org/thinktank/iigg/pop/index.html.
[9] Moyn, *The Last Utopia*, pp. 143, 212–13.