

## Two

# Towards an actor-oriented perspective on human rights

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### Summary

This chapter<sup>1</sup> argues that rights are shaped through actual struggles informed by people's own understandings of what they are justly entitled to. Examining rights from the perspective of actual struggles makes it possible for analysis to transcend accepted normative parameters of human rights debates, question established conceptual categories and expand the range of claims that are validated as rights. The chapter draws out these 'actor-oriented perspectives' in the course of reviewing key debates in the field of international human rights to show how they question underlying assumptions in these debates, and offer the possibility of breaking through the impasse that some of them have reached.

### Introduction: What does an actor-oriented perspective mean?

Actor-oriented perspectives are based on the recognition that rights are shaped through actual struggles informed by people's own understandings of what they are justly entitled to. They imply an approach to needs, rights and priorities that is informed by the concrete experiences of the particular actors who are involved in, and who stand to gain directly from, the struggles in question. The understanding of actor-oriented perspectives in this chapter is drawn in part from a legal literature that does not necessarily position itself within the human rights tradition, but which calls for an evaluation of legal principles in terms of their particular effects in a social setting, rather than only in terms of the conceptual coherence of abstract principles.<sup>2</sup> It goes beyond

## 32 / Citizenship and rights

a call for attention to context to an emphasis on consequences for less powerful groups and/or individuals in society. To quote one of the contributors to this literature: 'When we ask ourselves whether a social or legal practice works, we must ask ourselves, "works for whom?" Who benefits and who loses from existing political, economic, and legal structures?' (Singer 1990, p. 1841).

Such an approach thus explicitly acknowledges the reality of power differences and hierarchical relationships in society, and points to the need to look beyond abstract formal equality principles to the effect of those principles in entrenching or challenging hierarchy from the perspective of the subordinated (Matsuda 1990, p. 1768; Minow and Spelman 1990, p. 1650). When people ask the question 'works for whom?' and translate this question into action, they change the terms of institutionalized understandings of rights and make rights real in their own context. They use an otherwise legalistic discourse of rights in a transformative manner that translates it into an effective challenge to power inequalities. They shift the parameters of the discourse and expand the possibilities for action.

The discussion in this chapter is organized around three key debates that have gone on among legal practitioners and scholars in the field of human rights: debates about universalist versus relativist views about rights; about individual versus group rights; and about the hierarchy versus the indivisibility of rights. The chapter elaborates on each of these debates and then draws on critical responses to the debates and on accounts of concrete struggles over rights in order to highlight the ways in which actor-oriented perspectives challenge the premises underlying these debates and expand the range of claims that can be validated as rights.

### Universalism versus cultural relativism

Do human rights principles provide a universal standard to be applied uniformly, or are they contingent on social context? This debate has characterized the post-Second World War human rights movement since the enactment of its founding document, the Universal Declaration of Human Rights (UDHR) 1948, and continues to be intense. I will map out some of the positions represented on a spectrum that has 'universalist' arguments at one end and 'cultural relativist' arguments at the other.

#### Universalist arguments

The *first* type of universalist argument is the normative claim that human rights *should* provide a universal standard because rights inhere in

### Towards an actor-oriented perspective on human rights \ 33

every human person simply by virtue of being human. Rights flow from the inherent dignity of every human person. They are not given by the sovereign and therefore cannot be taken away by a sovereign. Nor are rights pegged to status based on age, gender, race or caste. This argument is influenced by the idea of 'natural rights' attributed to natural law theorists such as Kant (Wilson 1997, p. 8). Contemporary variants of this position can be found in Donnelly (1989), Howard (1992) and Schachter (1983).

It also finds expression in international human rights documents such as the 1993 Vienna Declaration on Human Rights, adopted at the first United Nations (UN) Conference on Human Rights. The preamble to the declaration states that 'all human rights derive from the dignity and worth inherent in the human person' and that the UDHR 'constitutes a common standard of achievement for all peoples and all nations'. Article One reinforces this by asserting that 'human rights and fundamental freedoms are the birthright of all human beings' and that the universal nature of rights and fundamental freedoms 'is beyond question'. Since rights flow from the inherent dignity of the human person, they are not contingent on particularities such as political, social, economic or cultural context.

The *second* category of universalist arguments is the formalist one: since most states have ratified and agreed to be legally bound by international human rights law, human rights standards are universal. In addition, some argue, the UDHR, though simply a declaration that is not legally binding, is such a widely accepted landmark instrument in human rights that it has (or parts of it have) become customary international law (Steiner and Alston 2000, p. 367). Customary international law refers to norms that have evolved from state practice over time, norms that bind even those states that have not entered into specific treaties on those aspects of international law: in this case, human rights.

This argument resonates with Howard's (1992) contention that human rights must be seen as universal because even if their Western origins are acknowledged, most states around the world have adopted the liberal state framework. This framework makes rights inevitable and indispensable in regulating state-citizen relations. This category of argument is not concerned with the legitimacy of human rights standards; formalist criteria such as the fact of ratification alone, or the existence of a liberal state framework, will suffice to make the case for universality.

#### **Multicultural universalism or weak cultural relativism**

I refer to this category of arguments as 'multicultural universalism' or