

## Inscribed in the Hearts of the People: Unpacking the Intrinsic Authority of Human Rights

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### Introduction

International human rights politics has seen serious setbacks in recent years. Expectations that the establishment of an International Criminal Court would end the culture of impunity worldwide have been largely unfulfilled. The Geneva-based UN Human Rights Council, established in 2006 as part of a modest institutional reform, continues to raise serious credibility issues. Attempts to enhance the efficiency of international human rights monitoring have brought only limited results. Worst of all, the nearly unanimous endorsement of the doctrine of Responsibility to Protect at the UN summit in 2005 has obviously failed to prevent atrocities in Syria, Yemen, Myanmar, Ukraine, and elsewhere.<sup>1</sup> While the crisis of multilateralism has generally weakened the still fragmentary infrastructure of international human rights protection, the very legitimacy of building such an infrastructure has also come under renewed pressure. Critics continue to attack the concept of universal human rights as a cover for the ongoing political, economic, and cultural hegemony of the West. Others paint the caricature of an anti-social individualism allegedly promoted by human rights. Old ideologies of absolute state sovereignty, which until recently were considered outdated, have re-emerged in aggressive ways.

The bitter lesson we had to learn, or relearn, in recent years is that progress in human rights politics cannot be taken for granted. Obviously, we cannot afford to leave human rights protection to well-meaning professionals who know how to administer international standards and institutions. For human rights to flourish and gain traction, they need the lasting commitment of many people who are convinced that it is worth making the effort. Hence, the time is ripe for mobilizing renewed political support. In the face of deliberate misperceptions, ideological distortions, and widespread fatalism,

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1. See UN Office of Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

the first step must be to recapture a meaningful concept of human rights. This chapter contributes to this task by briefly discussing three crucial features of human rights: their intrinsic authority as “inalienable rights,” their relational features as facilitators of meaningful interaction, and the diversity-friendly understanding of universalism. The chapter concludes with a few general remarks.<sup>2</sup>

## Human Rights as “Inalienable Rights”

“Human rights are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation.”<sup>3</sup> When expressing this statement, former UN High Commissioner for Human Rights Mary Robinson did not wish to question the significance of legally binding instruments of international human rights protection. Human rights need a functioning legal infrastructure to gain political traction and to achieve effectiveness. Rather, Robinson’s point is that such law-making comes second. Prior to any acts of legislative and juridical standard setting, human rights claim an *intrinsic authority*. There is something inherently compelling in the idea of equal dignity and equal rights for all human beings across regional, political, and cultural boundaries.

To stress the intrinsic authority of human rights, prior to any acts of law-making, is the best antidote to old and new concepts of absolute state sovereignty, which are currently on the rise. Even authoritarian regimes may find it useful to endorse human rights in theory, as long as they have broad leeway to define what this means in practice. In the view of autocratic governments, human rights norms may be just another product of their own sovereign legislative decisions, which therefore should fully remain in the grip of their sovereign interpretative power. It is against such proclaimed primacy of the sovereign state that the insistence on an *intrinsic* authority of human rights unfolds its political significance. The important point is that human rights must not end up as mere tools employed in diplomatic games; nor should respect for basic rights depend upon the goodwill of those in power.

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2. For a more detailed and more systematic discussion of these themes, see Heiner Bielefeldt, *Sources of Solidarity: A Short Introduction to the Foundations of Human Rights* (Boca Raton: Florida Atlantic University Press, 2022). Also available in Open Access: DOI:10.25593/978-3-96147-512-4. The following text is in parts based on chapters 1, 3, and 4 of that book.

3. Cited from [https://www.amnesty.ie/wp-content/uploads/2016/09/Chapter\\_01.pdf](https://www.amnesty.ie/wp-content/uploads/2016/09/Chapter_01.pdf).

It is noteworthy that international human rights documents *expressis verbis* testify to the priority of an intrinsic authority, upon which they themselves are based. The preamble of the 1948 Universal Declaration of Human Rights begins with “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family.” Remarkably, the first word in this opening sentence of the first-ever international human rights document is “recognition.” Moreover, the preamble confirms that such recognition is due to human beings because of their “inherent dignity.” The adjective “inherent” indicates that the whole project of establishing international human rights rests on the understanding that there is something inherent in human beings that commands respect. In other words, it is not through the enactment of positive human rights standards that people can lay claim to respect of their dignity. It is the other way around, in that the recognition of an inherent dignity provides the precondition for this whole process of international law-giving to make any sense at all.

The concept of human dignity constitutes the ethical nucleus of human rights. At the same time, the idea of an inherent dignity of all humans resonates profoundly in various religious, philosophical, and cultural traditions. For example, the Bible ascribes an elevated rank to all human beings, owing to man’s and woman’s creation “in the image and likeness of God” (Gen. 1:27). In Psalm 8, the singer admires the sublime beauty of the night sky, which makes him aware simultaneously of his frailty and his divine calling within the order of the creation. He turns to God, wondering, “What is man that you are mindful of him, and the son of Adam that you care for him!” (Ps. 8:5). Religious notions and metaphors, Jeremy Waldron writes, “convey a profound sense of the sanctity of the human person—each of us unimaginably and incomparably sacred because of this relation to the Most Holy.”<sup>4</sup>

International human rights documents, starting with the Universal Declaration, cautiously and consistently avoid any direct religious references. Proposals made by some governments during the deliberations on the draft of the Universal Declaration to strengthen the authority of human rights by inserting a religious source remained unsuccessful. A clear majority of representatives endorsed the counter-argument that the invocation of a particular religious semantic would be inappropriate in a pluralistic world.<sup>5</sup>

4. Jeremy Waldron, *One Another’s Equal: The Basis of Human Equality* (Cambridge: Harvard University Press, 2017), 196.

5. See UN Doc. A/C.3/SR.96-99, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL4/804/30/PDF/NL480430.pdf?OpenElement>.

Hence, the language of the Universal Declaration, and of the various human rights conventions enacted in its wake, remains thoroughly secular. This does not preclude the possibility for faith communities to appreciate human rights as a gift of God, a divine endowment, or to use other religious concepts and metaphors. The secular language of human rights is not polemical against religion.<sup>6</sup> Rather, its purpose is to keep the space open for a broad variety of ways in which people—believers as well as non-believers—may try to make sense of the intrinsic authority of human rights.<sup>7</sup> There is no need to find an interreligious or cross-cultural consensus about what in theory constitutes the ultimate source of that authority—as long as we have a sufficiently broad agreement on the status and significance of human rights in practice.

Human rights are not just another set of legal tools, norms, regulations, or entitlements. Intimately connected to the conundrum of human dignity, they enjoy the elevated rank of “inalienable rights,” which all human beings possess simply because they are human. The preamble of the Universal Declaration links the “inherent dignity” of all members of the human family to their “equal and inalienable rights.” By qualifying human rights as “inalienable” rights, the preamble underlines their peculiar authority high above their pragmatic usefulness as legal instruments. Inalienable rights can be neither bought nor sold, nor can they be enhanced or forfeited. They are connected to the humanness of each and every human person.

In their declaration on the philosophy of human rights, the World Youth Alliance recently confirmed the central role of human dignity:

Human beings have intrinsic dignity. This intrinsic dignity does not depend on any circumstance, stage of development, or potential, and no human community can grant or rescind it. Thus, human beings must always be treated as an end and never used solely as a means. All human persons share this common dignity and as such are called to live in solidarity with each other.<sup>8</sup>

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6. See Heiner Bielefeldt and Michael Wiener, *Religious Freedom under Scrutiny* (Philadelphia: University of Pennsylvania Press, 2020), 209–20.

7. Religious references from different traditions are included in the 2017 Beirut Declaration to support 18 commitments on “Faith for Rights,” <https://www.ohchr.org/en/issues/freedomreligion/pages/faithforrights.aspx>. See also the related toolkit for peer-to-peer learning exercises: <https://www.ohchr.org/en/faith-for-rights/faith4rights-toolkit>.

8. See World Youth Alliance, Declaration on the Philosophy of Human Rights <https://www.wya.net/publications/declarations/philosophy-of-human-rights>.

Human dignity is the common denominator running through all the specific provisions and entitlements. Accordingly, any serious violation of human rights is at the same time an offence to human dignity.

To treat a fellow human as a mere commodity, which could be trafficked, sold, and exploited, is in total breach of the basic respect that human beings owe each other. The same is true for acts of torture, which reduce the victim to a helpless bundle of pain and shame. Policies of state censorship employed to stifle public debate, to deprive people of their freedom to communicate with each other openly and on an equal footing, also offends their human dignity. Forced evictions violate the dignity of those who end up living unprotected in the streets. Racist ideologies, which depersonalize the person by reducing them to just an exemplar of an allegedly inferior group, are a slap in the face of our common humanity and thus are incompatible with human dignity. The various human rights provisions—civil, political, economic, social, and cultural rights—have evolved and will further develop in protest against such manifestations of disrespect of human dignity. This accounts for their specific authority of inalienable rights, which we cannot ignore without betraying our common humanity. As Nelson Mandela has put it, “To deny people their human rights is to challenge their very humanity.”<sup>9</sup>

## Human Rights as Relational Rights

Every individual person is entitled to enjoy respect for their dignity and rights. This focus on individuals as rights holders has become a source of much confusion. Critics from different political or ideological camps have attacked human rights as allegedly promoting a particular individualistic way of life. Karl Marx was one of the first to strike this chord. “None of the so-called rights of man,” he writes, “go beyond egoistic man . . . that is, an individual withdrawn into himself, into the confines of his private interests and private caprice and separated from the community.”<sup>10</sup> According to Marx, the freedom propagated in the 1789 Declaration of the Rights of Man and the Citizen “is based not on the association of man with man, but on the separation of man from man. It is the *right* of this separation, the right of the restricted individual, withdrawn into himself.”<sup>11</sup>

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9. Address by Nelson Mandela to the Joint Session of the House of Congress, Washington DC - United States, 26 June 1990, [http://www.mandela.gov.za/mandela\\_speeches/1990/900626\\_usa.htm](http://www.mandela.gov.za/mandela_speeches/1990/900626_usa.htm).

10. Karl Marx, “On the Jewish Question” (originally published in 1844), <https://www.marxists.org/archive/marx/works/1844/jewish-question>.

11. Marx, “Jewish Question” (emphasis in the original).

Conservative critics have similarly castigated the allegedly one-sided focus on rights of the individual. For right-wing legal philosopher Carl Schmitt, individual rights are part and parcel of a bourgeois ideology, which aims “with great precision at subjugating state and politics, partially into an individualistic domain of private law and morality, partially into economic notions. In doing so they deprive state and politics of their specific meaning.”<sup>12</sup> One of the contemporary critics is Saba Mahmood, who contends that human rights are generally “apathetic to communal aspirations.”<sup>13</sup> It would be easy to further expand the list of critics from different political or ideological camps who have based their objections to human rights on the charge of individualism and a concomitant erosion of community values.

While it is true that respect for human dignity and rights is due to each and every individual, however, human rights are not individualistic in the sense of promoting egoism and self-isolation, as Marx, Schmitt, and other critics seem to assume. Confusing rights held by individuals with an individualistic way of life has become the source of countless misunderstandings. In fact, human rights are typically exercised together with others. One of the most striking examples is the freedom to peaceful assembly.<sup>14</sup> Although it is a right held by each individual person, who should be free to decide whether to join a public assembly, the general purpose is to allow people to overcome isolation. To participate in a political demonstration can be an intense experience of solidarity.

Another example is freedom of association,<sup>15</sup> which facilitates the establishment of organizations through which people pursue common interests in a more sustainable manner. Freedom of religion or belief is yet another case in question. Among other things, it protects manifestations of religion or belief “in worship, observance, practice and teaching,” which may be exercised “either individually or in community with others and in public or private.”<sup>16</sup> Freedom of expression,<sup>17</sup> too, has important relational features; it is an indispensable precondition of any flourishing discursive

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12. Carl Schmitt, *The Concept of the Political*, trans. George Schwab (2nd edition of 1932) (Chicago: University of Chicago Press, 1996), 72.

13. Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton: Princeton University Press, 2016), 51.

14. Enshrined in Article 21 of the ICCPR.

15. Likewise enshrined in Article 21 of the ICCPR.

16. Article 18, paragraph 1, of the ICCPR.

17. Enshrined in Article 19 of the ICCPR.

democracy. At first glance, habeas corpus rights<sup>18</sup> may seem to be a less clear case. However, their main purpose is to prevent an incommunicado situation, where a detainee is deprived of any contact with the external world.

Human rights are relational rights in that they both presuppose and foster manifold human relations in society. Accordingly, human rights are neither individualistic in the narrow sense nor apathetic to communal aspirations, as critics want us to believe. Instead, their purpose is to empower people to overcome coercive practices, authoritarian structures, and power asymmetries, wherever they exist. The unqualified semantics of “individualism” overshadows the fact that human rights are essentially anti-authoritarian, not anti-communitarian. By challenging various forms of authoritarianism in politics, economy, religion, or family life, human rights can become a positive factor of community reforms. They can contribute to transforming autocratic regimes into democracies based on the rule of law; they help broaden the space for public critical discourse; they play a crucial role in reshaping the understanding of marriage and family life by demanding full respect for women’s rights in the domestic sphere; they back up the development of trade unions, political associations, and civil society organizations; they support children in their rights to education and participation in public life; and they serve as normative reference for the full inclusion of persons with disabilities in an evolving barrier-free society.

Authoritarianism is a multifaceted phenomenon. It often comes in the shape of collective units, which subjugate individuals to the primacy of alleged community interests without giving them sufficient breathing space to voice their independent views and state their own interests. Yet authoritarianism also manifests itself in forms of involuntary exclusion *from* the society and community. In a climate of fear created by control-obsessed autocratic regimes, dissidents typically face huge obstacles when wishing to meet, communicate, and establish independent political associations. In an authoritarian society, people with a critical mindset may feel isolated—even more so when sharing one’s views in private conversations incurs unpredictable risks. To be forced to participate in collective parades, where everyone has to march in the same direction and shout the same empty slogans, merely exacerbates feelings of loneliness, isolation, and despair.

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18. Enshrined in Article 9 of the ICCPR.

In the face of various forms of involuntary isolation, human rights facilitate joint activities and practices, such as holding public demonstrations, establishing political parties or trade unions, cherishing a pluralistic discourse community, appreciating diverse forms of partnership and family, or creating adequate conditions for religious minorities to develop an appropriate communitarian infrastructure. By empowering individuals within those various communities, human rights contribute to building more dynamic and lively communities based on partnership, respect, and an appreciation of diverse viewpoints. The “restricted individual, withdrawn into himself,” which Marx ascribes to human rights, is the typical upshot of political authoritarianism; it is not the result of human rights but follows from a lack of respect for human rights.

## Human Rights as Universal Rights

Human rights are universal rights. This follows from the foundational significance of respect for human dignity, which is due to each and every human being. Article 1 of the Universal Declaration famously professes: “*All human beings* are born free and equal in dignity and rights.”<sup>19</sup> Most of the specific human rights provisions start with the word “everyone,” thus corroborating the claim to universal applicability: “Everyone has the right to life, liberty and security of person.” “Everyone has the right to freedom of opinion and expression.” “Everyone has the right to education.” When it comes to the prohibitions of torture, slavery, or enforced disappearance, the “everyone” gives way to an apodictic “no one,” which is no less universalistic. This structure runs through the various human rights documents enacted in the wake of the Universal Declaration.

Comparable to the misperceptions caused by an unqualified semantics of individualism, the universal nature of human rights, too, has been exposed to misperceptions and conceptual distortions. Critics from various political camps have confused universalism with uniformity, such as the long-term purpose of creating a uniform world society. In spite of polemical attacks against what one critic has termed “the one-size-fits-all universalism of Human Rights,”<sup>20</sup> the universalism inherent in the very idea of human rights is diversity-friendly. Human rights, like freedom of conscience, freedom of religion, freedom of expression, freedom of assembly, freedom of association, and others, serve as

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19. Emphasis added.

20. Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca: Cornell University Press, 2013), 2.



the very antidote to ideologies of uniformity. They empower people to pursue their diverse life plans, to express their various political opinions, to manifest their different faith-related convictions and communitarian practices, to maintain and cherish particular cultural traditions, to establish different political parties or independent trade unions—always in conjunction with respect for the rights of others. As the 2001 Durban World Conference on Racism put it, “all peoples and individuals constitute one family, rich in diversity.”<sup>21</sup>

The acknowledgement of diversity, however, carries with it one important caveat, namely, the insistence on its free articulation. From the perspective of human rights, one can merely recognize freely and broadly articulated manifestations of cultural, religious, political, or other diversity. Without this caveat, the invocation of diversity or pluralism could hypothetically justify policies of forced segregation or other repressive ideologies. To be sure, human rights do recognize an inexhaustible diversity—but always on the condition that such diversity can be articulated freely and broadly. They do accept the reality of different collective identities—but on condition that there is space for internal diversity, too. They do appreciate difference, even radical difference—but they cannot recognize a “mute otherness,” which is often just an ideological pretext for internal repression. Hegemonic or monopolized interpretations of collective identity, which refuse to accommodate internal dissent, criticism, and open discussion, are always suspicious from a human rights perspective. This caveat is indispensable.

While it seems necessary to reject conceptual distortions and the various caricatures which some critics have drawn, criticism of human rights continues to play an important role. It should not disappear. Human rights have always been and will remain, an evolving concept, not least in response to criticism coming from different angles. Changes include reformulations and ever-new adaptations of their universalistic aspirations. The language of universalism has often been utilized as an ideological tool to justify particular status positions and privileges. Notwithstanding their universalistic semantics, classical human rights documents frequently assumed that the imagined rights holder had a particular sex (male), a particular skin colour (white), and a particular social status (property owner). Unquestioned assumptions concerning religious or educational backgrounds likewise made it into historical human rights

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21. Durban Declaration and Programme of Action: Outcome document of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, [https://www.ohchr.org/Documents/Publications/Durban\\_text\\_en.pdf](https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf).

documents. Until a few decades ago, experiences of persons with disabilities by and large remained outside of human rights debates. To say it with a grain of salt, the history of human rights is, among other things, a history of biases, blind spots, and inconsistencies. It would be naïve to assume that this is a matter of the past only—hence the need to remain vigilant and self-critical.

However, the history of human rights is also a history of uncovering such biases and tackling blind spots, with the purpose of achieving more credible and consistent reformulations of human rights. Women's rights activists have contributed to broadening the human rights discourse when addressing violations occurring in the private sphere, which previously had largely been outside of critical monitoring. Persons with disabilities have brought to the fore their experiences of exclusion and created a convention dedicated to the long-term purpose of a barrier-free society. Recent non-discrimination clauses also include sexual orientation and gender identity within the lists of prohibited grounds of unequal treatment. Indigenous peoples have received systematic attention in human rights debates. This list of examples is non-exhaustive.

Nevertheless, it is true that any formulation of universal human rights will inevitably carry particularistic indexes of time, space, and other contingencies. Concepts like dignity, freedom, empowerment, egalitarianism, or liberation will never be entirely free from particular historical legacies. The legal and political techniques of international standard setting likewise have their contextual path-dependencies. However, universal human rights neither require nor postulate an absolute vantage point high above the messiness of human life. Rather, a critically reconstructed normative universalism can only be a “universalism from within”—or as Linda Hogan has put it, “an embedded universalism.”<sup>22</sup>

Universal human rights always unfold their critical transformative force within the particular contingencies of human life. They contribute to broadening contextual options; they enhance the prospects for voicing criticism within as well as across political and cultural boundaries; they empower people to challenge traditional roles and expectations, such as gender-related stereotypes; they help open previously hermetic borders and facilitate meaningful exchanges. This is not just a theoretical postulate. It happens when people protest against corruption of the local mafia, when employees insist

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22. Linda Hogan, *Keeping Faith with Human Rights* (Washington, DC: Georgetown University Press, 2015), 112.

on establishing an independent trade union, when an Indigenous community defends its holy sites against the interests of the extractive industry, when people with hearing impairments demand a broader availability of sign language in daily life, when religious charity organizations support refugees in spite of popular resentments. At the same time, contextual experiences of injustice can become motives for redefining human rights and enhancing their responsiveness to new challenges. Hence, the universalism underneath human rights will always remain work in progress—or a universalism on probation.

### **Concluding Remarks**

Human rights rest upon our common humanity: the dignity we all share as human beings. The awareness of human dignity can motivate people to take action in solidarity. The good thing is that this foundational idea of human rights is easy to comprehend. It unfolds its appealing force far beyond the limited circles of experts. It is no less a matter of the heart than a matter of the mind, as Mary Robinson has reminded us. Hence, it may be good to reiterate her message that “Human rights are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation.”