

# Visions of Human Rights

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04/22

## I. Introduction

The twentieth century was an eventful one for human rights, and not just because they were so shockingly abused. In a relatively short period of time, human rights became the focus of a flurry of new institutions, laws, and political practices. They became part of our shared normative language – of how we evaluate what goes on in the world. And they caught the sustained attention of philosophers, too. Human rights are today a widely recognized and well-developed topic of philosophical research. But how, if at all, is this theoretical development connected to the other, practical ones?

Theorizing human rights is an *activity* – one pursued with certain aims, in a historical context. Our central goal, in what follows, is to think about how the recent real-world success of human rights (a matter of context) has shaped the agendas of philosophers (a matter of aims). We adopt here, then, a specific approach to the history of the philosophy of human rights, one focused on the history of philosophical *responses* to modern human rights “practice.” Within this frame, there is much that we leave out, particularly with regards to work outside of the Anglo-American philosophical tradition.<sup>1</sup> Still, we hope this narrower inquiry will be of use to other, wider ones. By thinking carefully, albeit in bold strokes, about the nature, variety, and trends of philosophical engagement with human rights in the recent past, we hope to shed some light on what it might be worth doing as a philosopher of human rights in the future.

## II. Before the Beginning: The 1946-47 UNESCO Inquiry

Because we want to consider the role of historical context and, in particular, the real-world success of human rights in shaping philosophical agendas, a natural place to start our story is *before* that success occurs, i.e., before human rights practice is created. This will allow us to see, in starker terms, what difference its creation makes for philosophers.

Even if understood in a strictly legal and institutional sense,<sup>2</sup> the practice clearly did not suddenly pop into existence at a specific moment. The United Nations

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<sup>1</sup> A broader, more complete survey would examine more recent critical, continental, and non-Western philosophical perspectives on modern human rights practice. It would also cover more of the practice itself. While there are intricately developed regional systems of human rights, e.g., the European and Inter-American systems, we will focus here mostly on the practice at the international level. One reason for doing so is that much of the philosophical reflection we discuss reacts to the international practice.

<sup>2</sup> For a broader discussion on what might be included in the “practice” of human rights, see J. Nickel, ‘What Future for Human Rights?’ *Ethics & International Affairs* 28 (2014), 213-23; A. Etinson, ‘On Being Faithful to the ‘Practice’: A Response to Nickel’ in A. Etinson (ed), *Human Rights: Moral or Political?* (Oxford, Oxford University Press, 2018), pp. 160-74. The question of breadth here is important since, if we think human rights practice includes things like popular rhetoric, and shared moral ideas, then the “practice” (or at least some elements of it) may stretch back well beyond 1948, perhaps all the way to the

General Assembly's adoption of the *Universal Declaration of Human Rights* (hereafter 'UDHR'), on December 10<sup>th</sup>, 1948, comes close to being such a moment. However, human rights had achieved some legal recognition *before* 1948.<sup>3</sup> And even with the arrival of the UDHR, it would still take several more decades before a dedicated, legally binding human rights instrument emerged at the international level, and for enough such instruments to accumulate into the modern human rights system we know today.<sup>4</sup>

Complex, gradual, and winding as the creation story may be, the immediate postwar years (1945-48) are a good starting point for the present analysis. By 1946, the UN Commission on Human Rights (UNCHR) had begun work on the UDHR and associated legal conventions.<sup>5</sup> The basic outlines of human rights practice were firmly in the process of being established, debated, and imagined. This generated an important crucible for philosophical reflection about the practice *before* it came to be (at least in anything like its present shape).

One way to get a concrete sense of the forms such reflection would take is to look at the 1946-47 *UNESCO Inquiry into the Theoretical Foundations of Human Rights*, which surveyed some fifty-odd thinkers about the project then being pursued by the UNCHR. In the sub-section that follows, we offer a taxonomy of the most common philosophical interventions spurred by that inquiry.

### The UNESCO Inquiry

By its own account, the main purpose of the UNESCO survey was to support the drafting work of the UNCHR by clarifying "the principles on which might be founded a modern declaration of the Rights of Man."<sup>6</sup> To this end, the survey sent a memorandum and questionnaire to over 150 academics, politicians, writers, and public figures. The questions posed ranged from the very general (e.g., how respect for individual rights should be balanced against the pursuit of social goods, and whether the former can be justifiably restricted in the case of emergencies) to the reasonably specific: respondents were asked to comment on "(a) the theoretical grounds, (b) the practical extent, and (c) the efficient guarantees"<sup>7</sup> of a list of candidate human rights, most of which were later affirmed in the UDHR itself.

Among the roughly 60 individuals who responded, nearly 85% were from countries in North America and Western Europe. The others were from Soviet Bloc countries (5), India (3), Latin America (2), and China (1).<sup>8</sup> Although this group was obviously far from representative of the global population, almost exclusively male, and highly idiosyncratic in other respects as well, the variety of responses show that philosophical reflection contributed in several different ways at that historical moment, and that it often emerged from outside the confines of academic

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Stoics or before, on some accounts. See also S. Moyn, 'Substance, Scale, and Salience: The Recent Historiography of Human Rights' *Annual Review of Law and Social Science* 8 (2012), 123-40.

<sup>3</sup> The inter-war Minority Treaties are just one example of this.

<sup>4</sup> See S. Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA, Harvard University Press, 2010), for a famous defense of the idea that the modern human rights movement only truly coalesced in the 1970s.

<sup>5</sup> As soon as the UN Commission on Human Rights began its work, in 1946, its plan was to draft a declaration *as well as* a legally binding convention. See E. Roosevelt, 'The Promise of Human Rights' *Foreign Affairs* 26 (1948), 470-77.

<sup>6</sup> UNESCO, 'Records of the General Conference, First Session (1946)' 236.

<sup>7</sup> See 'Memorandum and Questionnaire Circulated by UNESCO on the Theoretical Bases of the Rights of Man', in M. Goodale (ed), *Letters to the Contrary: A Curated History of the UNESCO Human Rights Survey* (Stanford, Stanford University Press, 2018), pp. 47-53.

<sup>8</sup> For a full overview, see Goodale, *Letters to the Contrary*, p. 21.

philosophy itself.<sup>9</sup> Some of the most common modes of response can be categorized as follows:

1. *Dreaming*. First, and perhaps most straightforwardly, many respondents were tempted to embrace the vision placed before them, i.e., to join in *calling* for an international human rights charter, and institutional practices that would give it effect. As the composer Arnold Schoenberg wrote in his reply, “We must find a minimum of rights that are valid for all peoples and all races.”<sup>10</sup> Such acts of political imagination – that is, the contemplation and affirmation of an institutional reality yet to be created – are what we will call “dreaming.”

Political dreams are notoriously subject to disagreement and debate, and the vision placed before the UNESCO respondents was no exception. For one, there were disagreements about the content of any (desirable) future bill or declaration of human rights. Some argued that the new instrument should include only civil and political rights, and no social and economic rights (though most respondents strongly disagreed with this idea).<sup>11</sup> Some thought it should be accompanied by a declaration of duties or obligations.<sup>12</sup> Others thought any talk of rights should be entirely replaced with talk of needs.<sup>13</sup> There were also disagreements about the institutional nature of the proposal. For instance, some believed it was pointless to draft a non-legally binding declaration, and that the drafting committee should focus exclusively on a legally enforceable convention;<sup>14</sup> others maintained just the opposite.<sup>15</sup> Some called for the establishment of an international human rights court;<sup>16</sup> others thought this was an unrealistic fantasy.<sup>17</sup>

2. *Advocacy*. Those respondents who dreamed of human rights also often *advocated* for that dream, by offering reasons for others to share it. Some UNESCO respondents advocated for the human rights project as a kind of symbolic historical necessity. As Pedro Toncoso Sánchez, a diplomat and jurist from the Dominican Republic, wrote, “...all the blood, sweat, and tears shed by humanity during the last world war must result, above all, in a greater reality of the rights of man. Otherwise, the sacrifice of humanity will have been in vain.”<sup>18</sup> A similar motivating thought appears in the concluding summary of the UNESCO survey itself, which portrays the United Nations, and its commitment to human rights, as a “symbol to all of victory over those who sought to achieve tyranny through aggressive war.”<sup>19</sup> Other attempts at advocacy focused on the specific moral and political values furthered by

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<sup>9</sup> For an overview of the idiosyncratic selection of respondents, see Goodale, *Letters to the Contrary*, pp. 17–23. MENTION GENDER IMBALANCE?

<sup>10</sup> A. Schoenberg, ‘The Rights of Man’, in Goodale, *Letters to the Contrary*, p. 300.

<sup>11</sup> K. Riezler, ‘Reflections on Human Rights’ in *Letters to the Contrary*, p. 197.

<sup>12</sup> E.H. Carr, ‘The Rights of Man’, p. 112; M. Ghandi, ‘A Letter Addressed to the Director-General of UNESCO’, p. 191; J. Maritain, ‘Philosophical Examination of Human Rights’, p. 181; M. Nicolay, ‘Untitled’, p. 203 [all in Goodale, *Letters to the Contrary*].

<sup>13</sup> H. Levy, ‘Declaration on the Rights of Man’, in Goodale, *Letters to the Contrary*, p. 168–9

<sup>14</sup> L. Carniero, ‘On the Draft Convention and “Universal Declaration of the Rights of Man”’ in Goodale, *Letters to the Contrary*, p. 99.

<sup>15</sup> E.H. Carr, ‘The Rights of Man’, in Goodale, *Letters to the Contrary*, p. 112.

<sup>16</sup> Carr, ‘The Rights of Man’, p. 100; L. Mumford, ‘Memorandum on the Rights of Man for the Commission on Human Rights of the United Nations’ in Goodale, *Letters to the Contrary*, p. 106.

<sup>17</sup> H. Kabir, ‘The Rights of Man and the Islamic Tradition’, in Goodale, *Letters to the Contrary*, p. 223.

<sup>18</sup> P.T. Sanchez, ‘Some Fundamental Ideas for the United Nations Declaration of the Rights of Man’, in Goodale, *Letters to the Contrary*, p. 189.

<sup>19</sup> UNESCO, ‘The Grounds of an International Declaration of Human Rights’ in Goodale, *Letters to the Contrary*, p. 55. Very similar language appears in the Preamble of the UDHR itself.

human rights: e.g., those of peace, happiness, prosperity, and especially human dignity – a term that appears frequently across the survey responses.<sup>20</sup>

3. *Grounding*. The UNESCO survey asks respondents to consider the theoretical “grounds” of human rights. If we think of this as essentially a matter of investigating whether there are good reasons to recognize (and, in this case, institutionalize) a specific human right, or set thereof, then *grounding* is closely connected to *advocacy*; indeed, if a grounding project yields positive results, these may well be used to advocate for human rights. But grounding as such is a distinct activity.<sup>21</sup> The search for grounds may, after all, come up empty, or lead to the discovery of concerns that encourage skepticism, rather than support.

The survey responses demonstrate these different possibilities. As might be expected, those who agreed that there were good reasons to establish an international human rights system often disagreed about what those reasons were. For some respondents, the key justification had to do with the special importance of the individual over the collective or the state.<sup>22</sup> For others, human rights express the essential “fusion” of the interests of the individual and the state.<sup>23</sup> Several respondents portrayed human rights as conditions of “dignity,” which was sometimes spelled out as a mark of human supremacy over other animals.<sup>24</sup> Others stressed that any proper rational justification of human rights would have to rely on some notion of natural law,<sup>25</sup> or timeless moral rights.<sup>26</sup> And a more philosophically skeptical group thought an ahistorical justification of human rights was out of the question, and that human rights could at best be seen as “rights accepted as such for men of a particular time,”<sup>27</sup> if not as entirely baseless.<sup>28</sup> It was a key finding of the survey – or at least one its organizers sought to play up – that all of the major world cultures could agree on human rights norms albeit from diverse philosophical standpoints.<sup>29</sup>

4. *Analysis*. Another way in which respondents contributed was by offering an *analysis* of the idea of human rights, its component parts, the relations between those parts, or key problems, tasks, or questions facing the human rights project in general. For example, Richard McKeon, an American philosopher closely involved

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<sup>20</sup> See *idem*, for a single example that appeals to all of these values.

<sup>21</sup> We sideline here, interesting questions about the differences between grounding the moral existence of human rights, on the one hand, and their political or legal institutionalization, on the other. For one exploration of this, see J. Tasioulas, ‘Exiting the Hall of Mirrors: Morality and Law in Human Rights’, in T. Campbell & K. Burne, *Political and Legal Approaches to Human Rights* (London, Routledge, 2017), pp. 73-90.

<sup>22</sup> Q. Wright, ‘Relationship Between Different Categories of Human Rights’, in Goodale, *Letters to the Contrary*, p. 91.

<sup>23</sup> P. Skov, ‘The Rights of Man’, p. 253; D.S. de Madariaga, ‘Material Security and Spiritual Liberty’, p. 278 [Both in Goodale, *Letters to the Contrary*].

<sup>24</sup> e.g., A. Lien, ‘Liberalism from the Ashes’, p. 77; H. Frère, ‘Memorandum on the Rights of Man’, p. 200 [Both in Goodale, *Letters to the Contrary*].

<sup>25</sup> J. Maritain, ‘Philosophical Examination of Human Rights’, p. 179. For another contemporary in this camp, see H. Lauterpacht, *An International Bill of the Rights of Man* (Oxford, Oxford University Press, 1945/2013), pp. 28-9.

<sup>26</sup> A.H. Compton, ‘Comments on the Basic Human Rights’, in Goodale, *Letters to the Contrary*, p. 106.

<sup>27</sup> B. Croce, ‘The Future of Liberalism’, p. 242; P. Skov, ‘The Rights of Man’, p. 252-3 [in Goodale, *Letters to the Contrary*].

<sup>28</sup> T.S. Eliot, ‘I Feel That it is Very Late in the Day to Make a Declaration on the Assumptions of the Later Part of Eighteenth Century’, in Goodale, *Letters to the Contrary*, pp. 330-1.

<sup>29</sup> UNESCO, ‘The Grounds of an International Declaration of Human Rights’, p. 58; J. Maritain, ‘Introduction’, pp. 67-8 [Both in Goodale, *Letters to the Contrary*].

in the organization of the survey, identified several such challenges. One was the striking difficulty of achieving global cooperation towards the advancement of human rights given profound ideological disagreement about their grounds and interpretation.<sup>30</sup> And here he suggested, plausibly, that ideological differences could only be neutralized through the accumulated experience of “common action” itself (though others pointed, also plausibly, to the importance of popular education on this score).<sup>31</sup> Many respondents saw a tension in the recognition of *both* civil and political human rights, on the one hand, and economic and social human rights, on the other: some saw this tension as irresolvable; and others thought its resolution required settling more general questions about the status of the individual in society.<sup>32</sup>

5. *Practical Elaboration.* One of the key requests put to respondents was that they reflect on the “practical extent” and “efficient guarantees” of human rights. We might think of this as a matter of *elaborating* the practical requirements of such rights, which is another kind of philosophical intervention.

Some respondents did this by reflecting on a specific human right, or set thereof. For instance, Margery Fry, a British prison reformer, academic, and the only woman to respond to the UNESCO survey, focused on the human rights of prisoners. She stressed the right to humane incarceration, and also explained that this could only be ensured if prisoners are regularly able to communicate with outside agents, such as lawyers or journalists, and if the public is alert to prison conditions in general.<sup>33</sup> In his discussion of the human right to free speech, Harold J. Laski, a leftist British academic and politician, argued that it cannot be effectively enjoyed without economic security, and public ownership of the press.<sup>34</sup>

Other respondents focused on general conditions for the satisfaction of human rights. For instance, Isaac Leon Kandel, an educational theorist at Columbia University, argued that education is not just itself a human right but the “essential foundation for the enjoyment of [all] human rights,” in part because it trains citizens to be free and morally responsible agents.<sup>35</sup>

6. *Critique.* UNESCO respondents offered alternative, and often conflicting, visions of the human rights project. But some of them raised serious concerns about, or rejected, the project altogether. These respondents engaged in *critique*.

One such critic was Aldous Huxley, who argued that human rights were hopelessly unable to meet the two most pressing challenges that, he suggested, humanity then faced: preventing total war and controlling global population growth.<sup>36</sup> Other critics harped on the (inevitable) generality of human rights

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<sup>30</sup> R.P. McKeon, ‘The Philosophic Bases and Material Circumstances of the Rights of Man’, in Goodale, *Letters to the Contrary*, p. 82, 86, 90.

<sup>31</sup> Ibid, p. 85, 90-1. H.J. Laski, ‘Towards a Universal Declaration of Human Rights’, in Goodale, *Letters to the Contrary*, p. 136.

<sup>32</sup> Q. Wright, ‘Relationship Between Different Categories of Human Rights’, in Goodale, *Letters to the Contrary*, 94. E.H. Carr, ‘The Rights of Man’, in Goodale, *Letters to the Contrary*, p. 110.

<sup>33</sup> M. Fry, ‘Human Rights and the Prisoner’, in Goodale, *Letters to the Contrary*, pp. 289-90.

<sup>34</sup> H.J. Laski, ‘Towards a Universal Declaration of Human Rights’, in Goodale, *Letters to the Contrary*, p. 135.

<sup>35</sup> I.L. Kandel, ‘Education and Human Rights’, in Goodale, *Letters to the Contrary*, pp. 290-2.

<sup>36</sup> A. Huxley, ‘The Rights of Man and the Facts of the Human Situation’, in Goodale, *Letters to the Contrary*, pp. 207-11.

resolutions, which was said to undermine their social relevance and action-guiding character.<sup>37</sup>

### III. Bearing Witness: The 1970s, 80s, and 90s

As soon as the UNHRC got word of the UNESCO report, in December of 1947, it quickly dismissed it as an unwelcome intrusion by an outside agency and, in that respect, a “very dangerous precedent.”<sup>38</sup> Regardless, one of the report’s striking lessons is that philosophical engagement with human rights can be pursued by all sorts of people – not just trained philosophers – and that such engagement is enriched by insights from other disciplines, which may approach *dreaming*, *grounding*, and *analysis*, etc., in interestingly different ways. Indeed, in those early years of the movement, apart from a few notable exceptions, such as McKeon, academic philosophers themselves were largely silent on the topic of human rights. And this silence was hardly interrupted across the decades that followed. Even the rich florescence of philosophical literature on rights in the 1970s and 80s largely sidelines the more specific topic of *human rights*.<sup>39</sup>

An important, agenda-setting exception to this is the work of English philosopher, Maurice Cranston. In a series of writings beginning with, *Human Rights Today* (London, Bellman Books, 1955 – Second Edition 1962), and culminating in *What Are Human Rights?* (London, Bodley Head, 1973), Cranston offers what we earlier called an “analysis” of the idea of human rights. But Cranston analyzes an emerging reality, not a dream. By the early 1970s, the core components of international human rights law, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the (International Covenant on Civil and Political Rights (ICCPR), would soon come into force; and human rights activism – e.g., of the sort pursued by Amnesty International, founded in 1961 – was rapidly gaining steam and publicity. Cranston positions himself as an interpreter of the idea at the center of all this activity, of what is meant by the term “human rights” in the world around him.

7. *Charitable Interpretation*. Because of his historical position, Cranston could ask philosophical questions that were unavailable to the UNESCO respondents working decades earlier. One is, as just mentioned, that of how to *interpret* or “make sense” of human rights claims already advanced in law and politics.<sup>40</sup> If one aims to render such claims maximally rational, coherent, or justified, then one interprets them *charitably*.

On Cranston’s version of charitable interpretation, human rights are “a twentieth-century name for what has been traditionally known as natural rights or, in a more exhilarating phrase, the rights of man.”<sup>41</sup> This puts him firmly in line with what would later be called the “orthodox” conception of human rights.<sup>42</sup> But not all those engaged in charitable interpretation would come to the same verdict. In his

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<sup>37</sup> H. Read, ‘Cultural Changes can Never be Brought about by any Process of Intellectual Assent’, in Goodale, *Letters to the Contrary*, pp. 327-8.

<sup>38</sup> Goodale, *Letters to the Contrary*, p. 23.

<sup>39</sup> See R. Dworkin, *Taking Rights Seriously* (New York, Bloomsbury, 1977); J. Waldron, *Theories of Rights* (Oxford, Oxford University Press, 1984) [for a helpful collection of relevant articles]. See also Moyn, *The last Utopia*, p. 215-6.

<sup>40</sup> This assumes, of course, that such claims *require* interpretation, i.e., that they lack theoretical or practical clarity as they stand.

<sup>41</sup> M. Cranston, *What Are Human Rights?* (London, Bodley Head, 1973), p. 1.

<sup>42</sup> See Sec IV below.

widely read *Making Sense of Human Rights* (1987, 2007), James W. Nickel stresses the distinctive egalitarianism, communitarianism, and international orientation of contemporary human rights, as compared to the “rights of man” of the Enlightenment.<sup>43</sup> And following John Rawls’s *Law of Peoples* (1993, 1999), proponents of the “political” approach take this contrast further, making the international orientation of human rights – i.e., their political role in triggering international aid, sanctions, and military intervention – their defining feature; a feature that, at best, only a subset of natural rights can share.<sup>44</sup>

8. *Quality Control*. Cranston’s idea of human rights provides him with a basis for assessing specific human rights claims. As natural rights, Cranston suggests, human rights must be (i) presently “practicable,” (ii) universally applicable to all persons, and (iii) of “paramount importance.”<sup>45</sup> Notoriously, in Cranston’s view, a good portion of human rights law falls short of these litmus criteria: indeed, he argues that many “second-generation” economic and social human rights – e.g., to social security, healthcare, and holidays with pay – fail all three tests, and so should be recanted.<sup>46</sup> Their legal recognition means “that a philosophically respectable concept of human rights has been muddled, obscured, and debilitated... by an attempt to incorporate into it specific rights of a different logical category.”<sup>47</sup> Cranston’s attempt to *de-muddle* human rights practice by ridding it of such elements is an example of what we will call *quality control*. Quality control is subtly different from *critique* in that it assumes that human rights practice is basically well and good, albeit in need of some (philosophically-informed) course correction.

Cranston’s combination of charitably elucidating the concept of human rights, and then measuring human rights practice against it, sets a mold for much philosophical work to come in the ensuing decades. Writing at roughly the same time as Cranston, Joel Feinberg insists not so much on the practicability but the present “claimability” of human rights – their having identifiable and specific duty-bearers – a test that many legally recognized human rights fail, in Feinberg’s view, rendering them mere “manifesto rights.”<sup>48</sup> Nickel argues that genuine human rights must be essential for living a “minimally good life” (a variation on the “paramount importance” test).<sup>49</sup>

Worries about conceptual disorder in real-world human rights claims, and the corresponding need for philosophical quality control, would not diminish in the

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<sup>43</sup> J.W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (London, University of California Press, 1987), pp. 7-12. These differences are more strongly emphasized in the book’s second edition, *Making Sense of Human Rights* (Oxford, Blackwell, 2007), pp. 12-4.

<sup>44</sup> See A. Etinson, ‘Introduction’, in A. Etinson (ed) *Human Rights: Moral or Political?* (Oxford, Oxford University Press, 2018), pp. 1-31, for an overview of the ‘Orthodox-Political’ debate.

<sup>45</sup> Cranston, *What Are Human Rights?*, pp. 66-7.

<sup>46</sup> Cranston, *What Are Human Rights?*, pp. 66-7.

<sup>47</sup> Cranston, *What Are Human Rights?*, p. 65.

<sup>48</sup> J. Feinberg, *Social Philosophy* (Englewood Cliffs, NJ, Prentice-Hall, 1973), pp. 66-7. The claim would inspire Onora O’Neill’s highly influential skeptical take on the idea of socioeconomic rights. See O. O’Neill, ‘The Dark Side of Human Rights’ *Ethics & International Affairs* 81 (2005), 427-39. But it should be noted that Feinberg was not, in the final analysis, critical of manifesto rights. Though manifesto rights are not now claimable, he reasoned, they may be “upon hypothetical future beings not yet in existence,” such that “Manifesto writers are easily forgiven for speaking of [manifesto rights] as if they are already actual rights, for this is but a powerful way of expressing the conviction that they ought to be recognized by states as potential rights.” *Social Philosophy*, p. 67. The passage is worth noting as a nuanced instance of *charitable interpretation* that is sensitive to the political imagination that yielded the practice.

<sup>49</sup> Nickel, *Making Sense of Human Rights* (1987), pp. 93-4.

years following Cranston's intervention. Writing at the dawn of the new millennium, James Griffin insists that "the language of human rights has become seriously debased."<sup>50</sup> His solution, like Cranston's, is to evaluate human rights claims against a substantive set of philosophical criteria – in his case, the furtherance of "personhood."<sup>51</sup> Others, such as the prominent lawyer and practitioner, Philip Alston, would propose *institutional* means of imposing quality control on the practice, e.g., by tailoring the formal procedures through which new human rights are put forward and ratified within the UN's institutional architecture.<sup>52</sup>

Though the turn towards *charitable interpretation* and *quality control* was new, philosophers still continued to engage in older activities like *analysis*, *grounding*, and *practical elaboration* through the 1980s and 90s. This is partly because the new tasks incorporated the old ones. As explained just above, Cranston, Griffin, and Nickel offer charitable interpretations of the nature (*analysis*), justification (*grounding*), and content (*practical elaboration*) of human rights posited in international law. But equally, some thinkers simply pursued these older activities in their own right. As an exercise in pure moral philosophy, Alan Gewirth sought to ground human rights in the conditions of practical agency.<sup>53</sup> And Henry Shue's famous analytic distinction between duties to respect, protect, and fulfill human rights is one of the few philosophical contributions in this period to have been directly incorporated into the legal practice itself.<sup>54</sup>

Numerous philosophical interventions in this period addressed the cross-cultural acceptability of human rights – also a prominent concern in the leadup to 1948. Contributions of this sort typically engaged in *analysis*, *grounding*, and *critique*, though now in a discernibly *ex post* mode. One of the central questions here was whether human rights practice is grounded exclusively in "Western" values, or whether it could be endorsed from a plurality of philosophical, religious, and cultural perspectives.<sup>55</sup> Some of this attention was a direct reaction to the so-called "East Asian" critique of the alleged individualism of international human rights,<sup>56</sup>

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<sup>50</sup> J. Griffin, 'First Steps in an Account of Human Rights', *European Journal of Philosophy* 9 (2001), 306.

<sup>51</sup> Griffin, 'First Steps in an Account of Human Rights', 311-15.

<sup>52</sup> See P. Alston, 'Conjuring Up New Human Rights: A Proposal for Quality Control', *American Journal of International Law* 78 (1984), 607-21.

<sup>53</sup> A. Gewirth, *Human Rights: Essays on Justification and Application* (Chicago, University of Chicago Press, 1982).

<sup>54</sup> H. Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ, Princeton University Press, Second Edition, 1996), Ch. 2. The UN, for instance, standardly adopts the formulation in setting out states' obligations under international human rights law. See, e.g., United Nations "Universal Declaration of Human Rights: The Foundations of International Human Rights Law" (<https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>). Shue's identification of the right to subsistence as a "basic right" (the fulfillment of which is necessary for the enjoyment of any other right) also did much to counteract skepticism about the justifiability of socioeconomic human rights in the philosophical community. (Shue, *Basic Rights*, Ch. 1).

<sup>55</sup> See e.g., C. Taylor, 'Conditions of an Unforced Consensus on Human Rights', in D. Bell & J. Bauer (eds), *The East Asian Challenge to Human Rights* (Cambridge, Cambridge University Press, 1999), Ch. 5; M. Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ, Princeton University Press, 2001); R. Rorty, 'Human Rights, Rationality, and Sentimentality', in *Truth and Progress: Philosophical Papers* (Cambridge, Cambridge University Press, 1998), pp. 167-185; J. Donnelly, *Human Rights in Theory and Practice* (Ithaca, NY, Cornell University Press, 1989).

<sup>56</sup> Lee Kwan Yew, 'Democracy, Human Rights, and the Realities' (speech delivered at the creation of the Asahi Forum, Tokyo, 20 November, 1992); A. Sen, 'Human Rights and Asian Values', in *The New Republic* (July 1997). See Bell and Bauer (eds), *The East Asian Challenge to Human Rights*, for an excellent overview.



but the development of distinctive Islamic and African charters of human rights were also relevant.<sup>57</sup>

Intersecting with some of these debates and against the backdrop of increased attention within the practice on women's rights, gender and multiculturalism became a vibrant area of research in the 1990s. Susan Moller Okin's much debated *Is Multiculturalism Bad for Women?*,<sup>58</sup> for example, gained attention in human rights circles as well, with theorists like Martha Nussbaum explicitly exploring these connections.<sup>59</sup> One of the most successful human rights campaigns of this era, the movement to end female genital mutilation (FGM), often became a focal point of contention, beginning with what to call the custom at issue.<sup>60</sup>

Another high-profile example of late twentieth century philosophy of human rights is Rawls's *Law of Peoples*.<sup>61</sup> Rawls's immensely influential *Theory of Justice* (1971) had famously bracketed questions about international justice. *The Law of Peoples* was Rawls's much-anticipated extension of the themes of *Theory* to global politics and included an account of human rights as an important class of norms in global political morality. Human rights for Rawls serve as a moral litmus test for full standing within the law of peoples. They are construed in dramatically minimal fashion, including just the rights to life, liberty, personal property, formal equality before the law, protections of ethnic groups from mass murder and genocide, and "a sufficient measure of liberty of conscience to ensure freedom of religion and thought."<sup>62</sup> Peoples that honor human rights tolerate each other and treat each other as equals. Thus "decent peoples", while not internally just from the perspective of political liberalism, nonetheless are to be tolerated by liberal peoples because they tolerate human rights. This political role—of marking out the limits of international toleration of nonliberal peoples by liberal peoples—exerts downward pressure on the content of human rights, especially because Rawls understands the consequences of falling outside these limits in terms of becoming liable for coercive intervention by international and foreign actors.

Rawls's particular interpretation of human rights, then, generates a radical version of the project of *quality control*: if human rights violations are to be taken as potential reasons for coercive intervention, then not too many rights—even basic rights—are going to sensibly count as *human* rights. For example, the right to social security is a widely accepted human right, though it seems implausible that its violation could justify coercive foreign intervention. Indeed, Rawls leaves it off the bare list noted above. Rawls's project is radical, *inter alia*, in that it is highly revisionary of the practice, in particular of the breadth of contemporary human rights doctrine and the infrequent role that coercive intervention actually plays in human rights implementation.

#### IV. Twenty-First Century Specialization

With the heated cultural debates of the 1990s and Rawls's stage-setting but contentious work on the scene, the philosophy of human rights blossomed in the

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<sup>57</sup> See the *Cairo Declaration on Human Rights in Islam* (1990) and the *African Charter on Human and Peoples' Rights* (1979).

<sup>58</sup> S. Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton, NJ, Princeton University Press, 1999).

<sup>59</sup> See, for example, M. Nussbaum, *Sex and Social Justice* (Oxford, Oxford University Press, 1999); *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 1999).

<sup>60</sup> See, for example, M. Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia, PA, University of Pennsylvania Press, 2002), p. 155.

<sup>61</sup> J. Rawls, *The Law of Peoples* (Cambridge, MA, Harvard University Press, 1999).

<sup>62</sup> Rawls, *The Law of Peoples*, p. 74.

twenty-first century. Over the past couple of decades, this area of research has evolved into a rich, complex field, fueled by the early twenty-first century publication of systematic book-length treatments (e.g., by Charles Beitz,<sup>63</sup> James Griffin,<sup>64</sup> and James Nickel<sup>65</sup>) as well as influential papers (e.g., by Amartya Sen,<sup>66</sup> Joshua Cohen,<sup>67</sup> and Joseph Raz<sup>68</sup>) sketching substantive conceptions of human rights and together yielding a rich array of systematic *analyses*—in particular *charitable interpretations*—*grounding* accounts, and *practical elaborations*.<sup>69</sup>

These general accounts and theories fertilized the field with a diversity of research questions. Work on these questions has been marked by increasing sophistication, in at least two notable directions. First, the philosophy of human rights began to increasingly utilize and engage work in established areas of Anglophone practical philosophy, e.g., regarding consequentialism, the nature of rights, or philosophical method. We now see a degree of academic specialization or professionalization that contrasts with the disciplinary fluidity that marked projects like the UNESCO survey. This development, if consonant with trends toward specialization in academia generally, has perhaps made the philosophy of human rights less accessible to non-philosophers. The shift may also explain the sharper contours of the demographics of philosophy of human rights in the twenty-first century: compared with philosophical theorizing about human rights in the mid-twentieth century, current philosophy of human rights is more likely to be undertaken by researchers professionally trained in philosophy.

But, second, it is also increasingly the case that these professionally trained philosophers take greater care to be informed about the political and legal details of human rights practice. As we will see shortly, seminal works by Beitz and others explicitly brought the practice to the forefront as a point of method. But current work in the field exhibits a more general trend that subsumes various methodological disputes: across the board, there now seems to be more of an expectation that those engaging in the philosophy of human rights proceed on a firm understanding of the part(s) of human rights practice they are examining, including, though not limited to, the increasingly elaborate apparatus of international human rights law.

Neither of these developments is surprising as a reaction to Rawls's intervention in the field. While the particular account of human rights that Rawls presents in *The Law of Peoples* has not itself enjoyed wide currency (as we will see below), the influence of Rawls in academic political philosophy—indeed, *Theory* is commonly considered to have revived the field in analytic philosophy—likely meant that Rawls's developing a statement on human rights at all had mainstreaming effects.

Nor does it seem remarkable that one of the lessons academic philosophy would eventually draw from Rawls's strikingly revisionary take on human rights is that even philosophers would do well to better appreciate the institutional details of actual human rights practice (e.g., that coercive intervention is “the limiting case, not the modal case, of international action to protect human rights”).<sup>70</sup> While the

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<sup>63</sup> C. Beitz, *The Idea of Human Rights* (Oxford, Oxford University Press, 2009).

<sup>64</sup> Griffin, *On Human Rights*.

<sup>65</sup> Nickel, *Making Sense of Human Rights*, second edition.

<sup>66</sup> A. Sen, ‘Elements of a Theory of Human Rights’, *Philosophy and Public Affairs* 32 (2004), 315-56; ‘Human Rights and Capabilities’, *Journal of Human Development* 6 (2005), 151-66.

<sup>67</sup> J. Cohen, ‘Minimalism about Human Rights: The Most We Can Hope for?’, *Journal of Political Philosophy* 12 (2004), 190-213.

<sup>68</sup> J. Raz, ‘Human Rights without Foundations’, in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (Oxford, Oxford University Press, 2010), pp. 321-37.

<sup>69</sup> Cohen, ‘Minimalism about Human Rights’, 198.

<sup>70</sup> Beitz, *The Idea of Human Rights*, p. 39.

question of how human rights theory should take the practice into account remains a substantively debated one,<sup>71</sup> increasingly, those on all sides of the debate try at least to avoid naiveness about the practice.

### The Orthodox-Political Debate

The more direct influence that Rawls seems to have had on the field involves one delineable element of his discussion in *The Law of Peoples*. As noted, many have found Rawls's view on human rights to be implausibly restrictive and minimalist. But although few subscribe to Rawls's specific, ultra-conservative account of what can count as a human right and why, one of Rawls's animating thoughts, namely that we should take the political role of human rights to be the entry point for understanding contemporary international human rights, has had significant influence. Rawls's account is now often seen as an early example of what have come to be known as *political* or *practical* conceptions of human rights, on which human rights norms are understood as norms that are *sui generis* to the contemporary international order and distinguished by their political role in it.<sup>72</sup>

The emergence of political conceptions of human rights led to the most voluminous of the specialized debates in twenty-first century philosophy of human rights. This debate, sometimes called the "orthodox-political debate", revolves around whether political conceptions are better able than "orthodox conceptions" to explain the nature and grounds of human rights. Whereas practical or political conceptions see the political role of human rights (e.g., as standards of legitimacy, aid, or intervention) as their distinguishing feature, orthodox conceptions begin, as their label suggests, from a more familiar or "traditional" idea, namely that human rights are rights possessed by all human beings simply in virtue of their humanity. Orthodox statements such as A. John Simmons's claim that "Human rights are rights possessed by all human beings (at all times and in all places), simply in virtue of their humanity"<sup>73</sup> struck proponents of political conceptions as misguidedly lacking in historical and political context: the rights recognized in the actual practice of human rights, proponents pointed out, appear to have the more specific purpose of guarding against threats that are especially common in today's world or, as Beitz puts it, addressing "certain predictable dangers ... to which individuals are vulnerable under typical circumstances of life in a modern world order composed of states,"<sup>74</sup> rather than "at all times and in all places."

Proponents of political conceptions also worried that an acontextual focus on rights possessed simply in virtue of being human naturally led orthodox theorists to ground their accounts of human rights in traditional moral theories, e.g., natural rights theories or theories about distinctively valuable human capacities, without sufficient argument showing why the actual practice of human rights should "mirror" these theories.<sup>75</sup> As Raz, an influential proponent of political conceptions, put the thought: "There is no point in criticizing current human rights practice on

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<sup>71</sup> See Etinson, 'On Being Faithful to the 'Practice''.

<sup>72</sup> C. Beitz, 'From Practice to Theory', *Constellations* 20 (2013), 28.

<sup>73</sup> A.J. Simmons, 'Human Rights and World Citizenship: The Universality of Human Rights in Kant and Locke', in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), p. 185.

<sup>74</sup> Beitz, *The Idea of Human Rights*, p. 109.

<sup>75</sup> For a forceful criticism of *mirroring* views about human rights, see A. Buchanan, *The Heart of Human Rights* (Oxford, Oxford University Press, 2013).

the ground that it does not fit the traditional human rights ethical doctrine. Why should it?"<sup>76</sup>

One way to frame the orthodox-political debate, then, is to see it as a disagreement about the commitments of *charitable interpretation* of the practice. Proponents of political conceptions, like Beitz and Raz, can be seen as holding that we would fail to interpret the practice in maximally coherent and attractive lights if we were to not forefront the current political role of the practice. Some moments of impatience with early orthodox statements, such as Raz's rhetorical retort, also suggest a stronger charge: these early orthodox theorists, on this stronger charge, seem not to be engaged in *charitable interpretation* at all but rather in anachronistic, pre-1948-style *grounding* and *analysis*, i.e., grounding and analysis without reference to any established practice. Proponents of orthodox conceptions, on the other hand, cast doubt on whether the project of understanding human rights norms as *sui generis* to the contemporary political order would, in order to be plausible, nonetheless have to appeal to some prior set of moral rights to a greater extent than political conceptions suggest.<sup>77</sup> In this respect, *grounding* and *charitable interpretation* are much more obviously continuous projects for orthodox conceptions, with the latter building on the former to explain (or explain away) aspects of the practice.

The project of *quality control* is also implicated in the orthodox-political debate. On political conceptions, paying sufficient attention to the political role of human rights within current practice means understanding human rights as institutional rights whose violation warrants international concern, such that where states fail to protect the human rights of those within their jurisdiction, various forms of international action (e.g., sanctions, assistance, public criticism, etc.) become justifiable. This thought generates a different kind of constraint on the content of human rights than, say, Cranston's criteria of practicability, universality, and moral importance; a further channel of *quality control*, for political conceptions, is whether international action in response to rights failures would be justifiable. On many political conceptions, this does not lead to anything like Rawls's starkly revisionary list of human rights, because human rights-based international action is understood—as it is in the practice—to include a much broader range of responses than coercive intervention (e.g., to also include assistance or diplomatic pressure).<sup>78</sup> But the constraint does have theoretical implications about whether and why some right can count as a human right, and has been another point of disagreement between political and orthodox conceptions.<sup>79</sup>

The voluminous literature on the orthodox-political debate has led to more sophisticated versions of both orthodox and political conceptions, one cumulative effect of which has been that recent statements across the board are more self-aware and explicit about the relation between universal moral rights, international human rights as a discursive practice, and human rights as rights recognized in international law.<sup>80</sup> For example, John Tasioulas's contemporary orthodox conception distinguishes sharply between human rights morality, international

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<sup>76</sup> Raz, 'Human Rights without Foundations', p. 328. See also Beitz, *The Idea of Human Rights*, p. 197.

<sup>77</sup> M. Renzo, 'Human Rights and the Priority of the Moral', *Social Philosophy and Criticism* 32 (2015), 127-48.

<sup>78</sup> Beitz, 'From Theory to Practice', 28.

<sup>79</sup> See, e.g., J. Tasioulas, 'On the Nature of Human Rights', in G. Ernst and J. Heilinger (eds), *The Philosophy of Human Rights* (Berlin, de Gruyter, 2012), pp. 55-56.

<sup>80</sup> For a sample of the various issues and positions, see, e.g., R. Cruft, S. M. Liao, and M. Renzo (eds), *Philosophical Foundations of Human Rights* (Oxford, Oxford University Press, 2015); T. Campbell and K. Bourne (eds), *Political and Legal Approaches to Human Rights* (New York, Routledge, 2017); A. Etinson (ed), *Human Rights: Moral or Political?* (Oxford, Oxford University Press, 2018).

human rights law, and other areas of law as are relevant to human rights morality: only some elements of human rights morality are appropriately expressed through legal norms, and only some of these norms constitute what is now international human rights law. On this view, international human rights law and certain other legal norms do express a background human rights morality, but not simply by “mirroring” the morality. Rather, the practice is a partial implementation of a universal human rights morality, in particular as is appropriate for a practice situated in international relations and international law.<sup>81</sup>

### Normative Problem-Solving for Puzzles in the Practice

One interesting fact about the orthodox-political debate is how little it has traveled to other disciplines or the professional communities of human rights practitioners. As is often the case with abstract theorizing, it is not always clear what the literature implies for human rights questions on the ground (as it were). But, as the exceptional example of Shue’s influence on human rights doctrine shows, our understanding of the philosophical foundations of human rights can, in fact, importantly shape our positions on questions about live practical problems in human rights.<sup>82</sup> Thus another subfield in contemporary philosophy of human rights involves trying to make philosophical sense of puzzles or controversies in the international practice with a view to resolving them, or at least gaining greater rigor in our thinking about them. Discussion in this vein employs modes of *analysis*, *quality control*, and *practical elaboration*, but in ways that are both more targeted and more systematic than many pre-UDHR examples of such exercises. They are more targeted in responding to particular puzzles or controversies within the practice, and more systematic in drawing on a well-developed general background conception of human rights.

Questions of the sort “Is there a human right to X?” perspicuously take on this task of targeted, systematic normative reasoning. Often, there will have been a preceding controversy in positive international law or within the human rights practice about whether international human rights law should recognize a human right to X. Philosophers will then ask the question whether, given their conceptions of human rights, it would make normative sense to recognize such a human right.<sup>83</sup>

The cluster of recent articles on whether international human rights law should recognize a human right to democracy falls in this category.<sup>84</sup> To be sure, this research lagged by several years the political momentum of the late 1990s that triggered the positive legal question of whether international law has come to recognize a right to democratic governance. In this sense, the philosophical debate

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<sup>81</sup> J. Tasioulas, ‘Saving Human Rights from Human Rights Law’, *Vanderbilt Journal of Transnational Law* 52 (2019), 1167-1207. For a sympathetic elaboration of the practical approach, see, for example, C. Lafont, *Human Rights and Global Governance* (Amsterdam, Van Gorcum, 2012).

<sup>82</sup> Shue’s analysis of human rights duties is now widely accepted as a standard component of international human rights law. Shue, *Basic Rights*, Ch. 2; note 64

<sup>83</sup> A selection of examples in this vein can be found in Cruft, Liao, and Renzo (eds), *Philosophical Foundations of Human Rights*, Pt. III.

<sup>84</sup> See, for example, J. Cohen, ‘Is There a Human Right to Democracy?’, in in *The Arc of the Moral Universe* (Cambridge, MA, Harvard University Press, 2010), pp. 349-72; Beitz, *The Idea of Human Rights*, pp. 174-86; T. Christiano, ‘An Instrumental Argument for a Human Right to Democracy’, *Philosophy and Public Affairs* 39 (2011), 142-76; M. Lister, ‘There Is No Human Right to Democracy, but May We Promote It Anyway?’, *Stanford Journal of International Law* 48 (2012), 237-76; Fabienne Peter, ‘A Human Right to Democracy?’, in Cruft, Liao, and Renzo (eds), *Philosophical Foundations of Human Rights*, 481-90; P. Gilabert, ‘Is There a Human Right to Democracy? A Response to Joshua Cohen’, *Revista Latinoamericana de Filosofía Política* 1 (2012), 1-37.

may feel anachronistic. But it is worth keeping in mind that the positive law question has not been resolved; it has only subsided. Further, the normative variables that were identified in the philosophical debate remain pertinent to the project of elaborating the practice and its content. These variables include the implications of recognizing an international human right for questions about sovereignty and interference in domestic affairs; the relation between the right to self-determination and other potential objects of international human rights; the relevance of instrumental connections or empirical conditions on the content of human rights; and the potential justificatory relations among various human rights. Here we see an example of targeted *analysis* and *practical elaboration*.

Questions of this sort also naturally feed into work on *quality control*, of which we noted the early example of Cranston's criticisms of socioeconomic rights. Cranston's worries about whether socioeconomic rights are real rights continue to animate philosophers, but the questions have become more fine-grained.<sup>85</sup> One kind of sophistication is that, when current debates center on a single right, they tend to be more attuned to the normative and institutional details of that right.<sup>86</sup> Debates about the standing of socioeconomic rights *qua* human rights have also come to involve *practical elaboration* about the conditions of rights realization. For example, Pablo Gilabert's proposal to understand the legal doctrine of progressive realization of socioeconomic rights as entailing "dynamic duties" – i.e., duties to improve feasibility conditions for a right when the right is not immediately realizable – draws on a particular practical elaboration of human rights doctrine to argue against Cranston's argument for excluding socioeconomic rights from the practice.<sup>87</sup> Gilabert's gloss on the doctrine of progressive realization is indicative of a form of *practical elaboration* in which philosophers increasingly engage, i.e., normative inquiry about a particular norm in human rights doctrine.

9. *Application*. Finally, twenty-first century philosophical research on human rights has yielded efforts to apply conceptions of human rights to neighboring areas and issues, e.g., trade, the environment, or health. Often, the strategy is to see whether and how human rights considerations might constrain activity in these other fields, with the aim of reaching more reasonable norms for the regulation of behavior. This is a relatively new mode of philosophical theorizing—we might call *application*—that has become available in virtue of the development of both human rights practice and human rights theory.

For example, what Simon Caney calls the "human rights approach to climate" change investigates how claims of human rights—to life, health, subsistence, etc.—generate normative demands for international action to curb climate change.<sup>88</sup> While considerations of economic efficiency and political stability may also yield such demands, the thought goes, human rights arguments do so in ways that more reliably track the moral urgency for vulnerable individuals. Similarly, philosophers have argued that aspects of business, finance, and international trade, immigration

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<sup>85</sup> O'Neill, 'The Dark Side of Human Rights'.

<sup>86</sup> See, for example, the right-specific arguments offered to cast doubt on an expansive human right to healthcare. G. Sreenivasan, 'A Human Right to Health? Some Inconclusive Skepticism,' *Aristotelian Society Supplementary* 86 (2012), 239-265; C. Pavel, 'Healthcare: Between a Human and a Conventional Right,' *Economic and Philosophy* 35 (2019), 499-520.

<sup>87</sup> P. Gilabert, 'The Feasibility of Basic Socioeconomic Human Rights: A Philosophical Exploration,' *Philosophical Quarterly* 59 (2008), 659-81; Nickel, *Making Sense of Human Rights*.

<sup>88</sup> S. Caney, 'Human Rights, Climate Change, and Moral Thresholds', in S. Humphreys (ed), *Human Rights and Climate Change* (Cambridge, Cambridge University Press, 2009), 69-90. See also H. Shue, *Climate Justice* (Oxford, Oxford University Press, 2014).

law and policy, global health regulations, and the law of the seas, etc. are unacceptable from a human rights perspective and must therefore be reformed.<sup>89</sup> One advantage of this kind of application is that it brings to the subject matter both the urgency of human rights standards and the relatively well-developed institutional apparatus of the human rights practice.

## V. Research Agendas for a Maturing Field

Looking ahead, we can expect greater specialization along the lines described above. It will be interesting to see how, as this happens, the philosophy of human rights interacts with work in related fields, which are themselves undergoing greater specialization and increasing sophistication. The current status of major research agendas suggests that interaction both with other debates in philosophy and with other academic disciplines and practices would be useful.

Consider some examples. The preceding discussion has concentrated on philosophical engagement with human rights as an isolated topic area. But human rights also figure prominently in many contemporary philosophical theories of global justice and global governance.<sup>90</sup> Perhaps because there is a fairly well-established international practice of human rights but not one of global justice, popular—or at least non-philosophical—discourse on global political morality sometimes falls into a mode of thinking that human rights norms exhaust norms of global justice and governance. But many philosophical theories of global justice and governance take human rights only to be a proper subset of their overall project. Investigating in greater detail the realms of global justice beyond human rights, therefore, would be of both theoretical and practical interest. This kind of work would help us gain clarity, for instance, about the recently popular charge that human rights are objectionably minimalist and thus ill-suited to address distributive inequality.<sup>91</sup> Whether and how this charge, if true, is a normative problem would depend on what non-human-rights norms of global justice are (or ought to be) in place.

Another potential direction of interaction involves empirical work on human rights, which has been growing in depth and breadth to include quantitative assessments of the effectiveness of human rights instruments, qualitative case

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<sup>89</sup> For example, on business and trade, see: S. Ratner, 'Corporations and Human Rights', *Yale Law Journal* 111 (2001), 444-545; L. Wenar, *Blood Oil* (Oxford, Oxford University Press, 2015); T. Pogge, *World Poverty and Human Rights* (Cambridge, Polity Press, 2001). On immigration, see: M. Blake, 'Immigration, Jurisdiction, and Exclusion', *Philosophy and Public Affairs* 41 (2013), 103-30; K. Oberman, 'Immigration as a Human Right', in S. Fine and L. Ypi (eds), *Migration and Political Theory* (Oxford, Oxford University Press, 2016), pp. 32-56; G. Brock, *Justice for People on the Move* (Cambridge, Cambridge University Press, 2020). On global health, see: N. Daniels, *Just Health* (Cambridge, Cambridge University Press, 2007); J. Wolff, *The Human Right to Health* (New York, Norton, 2013); K. Hessler, 'Exploring the Philosophical Foundations of the Human Rights Approach to International Public Health Ethics', in M. Boylan (ed), *International Public Health Policy and Ethics* (Springer, 2008), pp. 31-43. And on the law of the seas, see C. Armstrong, 'Abuse, Exploitation, and Floating Jurisdiction: Protecting Workers at Sea', *Journal of Political Philosophy* (2020), <https://doi.org/10.1111/jopp.12238>.

<sup>90</sup> For example, see A. Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford, Oxford University Press, 2003); S. Caney, *Justice Beyond Borders* (Oxford, Oxford University Press, 2005); D. Miller, *National Responsibility and Global Justice* (Oxford, Oxford University Press, 2007); M. Risse, *On Global Justice* (Princeton, N.J., Princeton University Press, 2012); P. Gilabert, *From Global Poverty to Global Equality* (Oxford, Oxford University Press, 2012); Lafont, *Human Rights and Global Governance*. The early example is, of course, Rawls's *Law of Peoples*.

<sup>91</sup> For normative analysis, see, e.g., J. Song, 'Human Rights and Inequality', *Philosophy and Public Affairs* 47 (2019), 347-77.

studies, and broad-view histories.<sup>92</sup> The results of such work are relevant for the kinds of question philosophers engage in—for example, empirical work could help philosophers flesh out the content of human rights and duties or contextualize their normative conclusions—and two considerations merge to make engagement in this direction more likely. First, academic philosophy, in general, is becoming more open to interdisciplinary exploration. Second, the field of human rights studies is itself an interdisciplinary field.

This second point generalizes further. For example, human rights considerations often serve as a bridge between political philosophy and international law. We have already noted twenty-first century examples of *quality control*, *practical elaboration*, and *application* involving various elements of the human rights practice. With parts of international human rights law, in particular, this kind of work often involves what Steven Ratner calls the “international law as target” mode of reasoning, or examining the justifiability of certain norms of international law (on resource trade, intellectual property, etc.).<sup>93</sup> In addition, some political conceptions of human rights employ what Ratner calls the ‘International Law as Analytical Input’ approach, or incorporating international law as source material for theorizing.<sup>94</sup> Clearly, both approaches require extensive engagement with international law on the part of philosophers.

Finally, the preceding discussion should make clear a general shift from *dreaming*, or contemplating human rights practice *ex ante*, to philosophy *ex post*. In recent work, the historian Samuel Moyn worried that philosophers have missed out on the chance to contribute to the “practice” because they have been too focused on abstract moral realities (human rights “in heaven”, as he calls it).<sup>95</sup> But perhaps there is room for the opposite worry as well. It may be that the best way to influence the practice, in a positive way, might be to go back to *dreaming* and, indeed, *critique* about what institutionally could be, and what will be, rather than carefully interpreting “what is.” Doing so would help us better understand whether the practice as it has come to be is sufficiently well-suited to address the normative challenges we now face in global politics and, if it is not, how we might improve upon it.\*

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<sup>92</sup> For an overview of recent empirical work in relation to normative theorizing about human rights, see C. Beitz, ‘The Practice and Its Authority’, *Critical Review of International Social and Political Philosophy*, <https://doi.org/10.1080/13698230.2020.1859220>.

<sup>93</sup> S. Ratner, ‘International Law and Political Philosophy: Uncovering New Linkages’, *Philosophy Compass* 14 (2019), <https://doi.org/10.1111/phc3.12564>, 1-12, 5. David Luban’s work on crimes against humanity is an influential early example in this genre. D. Luban, ‘A Theory of Crimes against Humanity’, *Yale Journal of International Law* 29 (2004), 85-167.

<sup>94</sup> Ratner, ‘International Law and Political Philosophy: Uncovering New Linkages’, 8. Buchanan’s *Heart of Human Rights* is an influential example in this category.

<sup>95</sup> S. Moyn, ‘Human Rights in Heaven’ in Etinson (ed), *Human Rights: Moral or Political?*, pp. 69-87.

\* For helpful comments, we are grateful to Andreas Follesdal, Kristen Hessler, Jon Mandle, Jim Nickel, Steven Ratner, Laura Valentini, and audiences at the 2020 MANCEPT Workshop on Human Rights and the International Legal Theory Webinar.