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Introduction: Thinking about Human Rights

Realities

In March 1999 Lal Jamilla Mandokhel, a sixteen-year-old Pakistani girl, was repeatedly raped. Her uncle filed a complaint with the police. Police officers detained her attacker, but handed Lal Jamilla over to her tribe. The council of elders decided that Lal Jamilla had brought shame on the tribe, and that the only way to overcome the shame was to put her to death. She was shot dead on the orders of the council.

There are several shocking features of this story. They include the violent and humiliating crime committed against Lal Jamilla; the violence and unfairness of her punishment; and the complicity of the police in this injustice. This was not, however, an isolated incident. Hundreds of women and children are the victims of ‘honour killings’ every year in Pakistan. Their killers are rarely prosecuted, but even when they are convicted they often receive light sentences (Amnesty International 1999).

Lal Jamilla was the victim of an unjust custom, although agents of the state were accomplices to her killing. Many people in many countries have been direct victims of state violence in recent times. Government forces massacred more than half a million civilians in Indonesia in the mid-1960s in an attempt to suppress communism. Estimates of the number

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of people killed by the Khmer Rouge regime of Pol Pot in Cambodia vary between 300,000 and 2,000,000 (Glover 1999: 309). More than 9000 people 'disappeared' under the military government in Argentina in the late 1970s. During the rule of Idi Amin in Uganda from 1972 to 1978 more than 250,000 people were killed. Hundreds of thousands of civilians were murdered by security forces in Iraq during the 1980s. Almost 2 per cent of the population of El Salvador is estimated to have died as the result of 'disappearances' and political killings during the civil war between 1980 and 1992 (Amnesty International 1993: 2). In 1994 between 500,000 and 1,000,000 people were killed in the government-directed genocide in Rwanda (Glover 1999: 120). This list is far from complete. It does not include Bosnia, Chechnya, Kosovo, East Timor, and many other places.

The concept of human rights provides a way of thinking about such events. As you read these words, there will probably be reports in the newspapers, and on radio and television, of similar cruelties and injustices elsewhere. These are stories about the violation of human rights. These events are all too real, but 'human rights' is a *concept*. It is a device for thinking about the real, and expressing our thoughts. If we are to understand the discourse of human rights, we must analyse this concept, even though it is easier to respond with sympathetic emotion to stories like that of Lal Jamilla than to analyse our concepts so that they are clear and precise. The understanding of concepts is the goal of the philosophical discipline of *conceptual analysis*. The concept of human rights, however, presents a challenge to this discipline. Concepts are abstract, and conceptual analysis is an abstract discipline. It can seem remote from the experiences of human beings. The analysis of the concept of human rights, therefore, must be combined with a sympathetic understanding of the human experiences to which the concept refers.

If conceptual analysis is both necessary and problematic for understanding human rights, so is statistical analysis. R. J. Rummel has calculated that governments murdered at least 169,202,000 persons in the twentieth century. According to his estimates, more than 45,000,000 political murders occurred between 1945 and the early 1990s (Rummel 1994: chapters 1–2). These statistics are important, but they can

easily numb our sense of the human suffering involved. Human-rights violations are facts that can be, and sometimes are, best expressed in terms of numbers, but there is an uneasy relationship between our knowledge of the numbers and our understanding of what they mean.

We do not need the concept of human rights to know and to say that these things are wrong. We do, however, need a *reason* to oppose them. If reality violates human rights, why should we take the side of human rights, and not that of reality? How do we know that there are any human rights? Such questions were posed, to challenge us, by the philosopher Jean Améry, who survived the Nazi extermination camp at Auschwitz. Perhaps, he considered, the Nazis were right because they were the stronger. Perhaps people had no rights. Perhaps all moral concepts were mere fashions. Was this not the reality of history? After all, classical Greek civilization was based on slavery and massacre. Was Nazi Germany different? (Glover 1999: 40).

Jonathan Glover has suggested that, for most people, most of the time, the virtues that matter are personal and narrow in scope. In everyday life, ordinary kindness is more important than human rights (Glover 1999: 41). Ordinary people, however, are sometimes not permitted an everyday life. They may get terror, massacres, mass rapes and 'ethnic cleansing'. The concept of human rights becomes relevant to ordinary people when the relative security of everyday life is absent or snatched away. It has often been said that human rights are most needed when they are most violated. Where they are generally well respected, we tend to take them for granted, and may consequently underestimate their importance.

The concept of human rights is, to a considerable extent, though not wholly, *legal*. The fountain-head of human-rights law is the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly on 10 December 1948. This declaration has, according to its historian, Johannes Morsink, 'profoundly changed the international landscape, scattering it with human rights protocols, conventions, treaties, and derivative declarations of all kinds.' There is now 'not a single nation, culture or people that is not in one way or another enmeshed in human rights regimes' (Morsink 1999a: x). The declaration was adopted in the

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aftermath of the victorious war against Fascism, and in a spirit of idealism. It makes a grand set of promises to the world's people. The declaration is said to be 'a common standard of achievement for all peoples and all nations'. All human beings, Article 1 affirms, 'are born free and equal in dignity and rights'. Everyone, Article 2 states, 'is entitled to all the rights and freedoms set forth in this Declaration without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

There is obviously a wide gap between the promises of the 1948 declaration and the real world of human-rights violations. Insofar as we sympathize with the victims, we may criticize the UN and its member governments for failing to keep their promises. But we cannot understand the gap between human-rights ideals and the real world of human-rights violations by sympathy or by legal analysis. This requires investigation by the various social sciences of the causes of social conflict and political oppression, and of the interaction between national and international politics. The UN introduced the concept of human rights into international law and politics. The field of international politics is, however, dominated by states and other powerful actors who have priorities other than human rights. It is a leading feature of the human-rights field that the governments of the world proclaim human rights but have a patchy record of implementing them. We must understand why this is so.

Concepts

The concept of human rights raises further difficulties because it stretches well beyond cases of extreme cruelty and injustice. Article 1 of the Universal Declaration, for example, states that all human beings are equal in rights. Article 18 says that everyone has the right to freedom of religion. How should we define the right to freedom of religion of those whose religion denies that all human beings are equal in rights? How can we make sense of human rights if the implementation of some human rights requires the violation of

others? Here the problem of implementing human-rights ideals derives, not from lack of political will or conflicts of political interests, but from the fact that human rights are not 'compossible', that is, the implementation of one human right can require the violation of another, or the protection of a human right of one person may require the violation of the *same* human right of another. If a religious group, for example, forbids its members, on the basis of its religious beliefs, to change their religion, then the religious freedom of the group will conflict with that of any members who wish to change their religion. If we support human rights that are not compossible, our thinking must surely be confused.

The problem of compossibility has been aggravated by what has been called 'rights inflation', that is, the extension of the concept of human rights to an ill-defined number of causes. There are controversial human rights even in the Universal Declaration, such as the right to 'periodic holidays with pay'. If the concept of human rights is to be useful, we must distinguish human rights from other social demands. Courts may decide rather precisely the legal rights of those who appear before them. Human rights are rather vaguely worded, and their meaning is not always settled in courts of law. Clarity in the understanding of human rights requires conceptual analysis, moral judgement and social-scientific knowledge. If the concept of human rights is to be useful, we must distinguish *human* rights from the *legal* rights of particular societies, and from other desirable social objectives.

What are 'rights', and how do 'human rights' differ from other kinds of rights? The concept of 'rights' is closely connected to that of 'right'. Something is 'right' if it conforms with a standard of rightness. All societies have standards of right, but it is often said that many cultures have no conception of people 'having rights'. The idea of everyone having 'human rights' is said to be especially alien to most cultures. Alasdair MacIntyre has argued that human rights do not exist. Belief in human rights, he says, is like belief in witches and unicorns, that is to say, it is superstition (MacIntyre 1981: 67).

MacIntyre's mistake is to think of 'human rights' as 'things' that we could 'have' as we have arms and legs. This mistake is embedded in the language of rights, for we do

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speak of our ‘having’ rights as we have mobile phones. Rights are, however, not mysterious *things* that have the puzzling quality of not existing, but *just claims* or *entitlements* that derive from moral and/or legal rules. This conception of rights defeats MacIntyre’s objection that belief in human rights is superstitious, for there is nothing superstitious in thinking about what human beings may be entitled to. The justification of human rights requires a *theory* of human rights. We will examine theories of human rights in chapter 4. There we shall see that the problem of *validating* the concept of human rights lies partly in the general problem of validating beliefs, and does not arise only from supposed defects in the concept of human rights.

The social sciences

Social scientists neglected human rights until recently. The aspiration to be ‘scientific’ marginalized the legal and moral conceptions of human rights. However, the increasing importance of the concept of human rights in national and international politics has stimulated the interest of some social scientists. The explanation of variations in respect for human rights in different societies has been accepted as a proper object of social-scientific investigation. It is sometimes said that gross human-rights violations – such as genocidal massacres – are ‘irrational’ and beyond scientific explanation, but there is a body of knowledge about state behaviour, bureaucracy and ethnic conflict that may explain a great deal about such actions. There is much controversy about theories and methodology in the social sciences, but there is no reason why behaviour that violates or respects human rights should be less explicable than other complex social phenomena.

The academic study of human rights has been dominated by lawyers. This may be explained by the fact that the concept has been developed to a large extent through national and international law. The field of human rights has become a technical, legal discourse, and lawyers dominate it because they are the technical experts. Law appears to provide ‘objective’ standards that ‘protect’ the concept of human rights from

moral controversy. This appearance is, however, illusory, for the meaning and application of human-rights standards is politically very controversial. International human-rights law is made by governments that act from political motives, and the extent to which it is implemented by those governments is influenced by political factors. Non-governmental organizations (NGOs), which have come to play an increasingly important role in the making of human-rights law, monitoring its implementation and campaigning for improved human-rights performance by governments, are political actors, even if they appeal to legal standards. Recent dramatic changes in the human-rights situations in the communist societies of Central and Eastern Europe, in Latin America, South Africa and elsewhere, have been primarily political events (Forsythe 1989; Donnelly 1998).

The study of international politics has been dominated by the theory of realism, which is concerned with the interests and power of states, and not with such ethical issues as human rights. The academic discipline of international relations has recently shown some interest in human rights (Dunne and Wheeler 1999; Forsythe 2000), but the topic remains marginal. Some international-relations scholars challenge the realist school by emphasizing the role in international politics of ideas in general, and of human-rights ideas in particular (Risse, Ropp and Sikkink 1999). The study of human rights in international politics has, however, with a few notable exceptions, fallen between international law, which is not systematically empirical, and international relations, which has neglected human rights for the supposed 'realities' of state power.

The neglect of human rights by the social sciences and the domination of human-rights studies by lawyers distort the concept of human rights. In the classic theory of 'natural rights' developed by John Locke in the seventeenth century every human being had certain rights that derived from their nature, and not from their government or its laws, and the legitimacy of government rested on the respect that it accorded to these rights (Locke [1689] 1970). The modern concept of human rights is a reformulation of this idea, and refers primarily to the relations between governments and their citizens. Political theory is the discipline that explains

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and evaluates these relations. Political science is the discipline that describes and explains the variations in the degree to which governments respect their citizens' rights. The contribution of political science to the study of human rights has, however, been disappointing. The study of human-rights issues has sometimes been carried out with the use of related concepts such as 'dictatorship', 'totalitarianism', 'authoritarianism', 'repression', 'state terror' and 'genocide'. There is also much work in political science on democracy that is relevant to understanding the current state of human rights. The desire of political scientists to be 'scientific', however, has led them to neglect a concept that appears at worst moralistic and at best legalistic.

The Western tradition of political theory has produced many formidable critics of such rights (Waldron 1987). This presents a strong challenge to the political science of human rights, especially since the classical critics are echoed by contemporary theorists (Brown 1999). Underlying any social sciences of human rights, therefore, are a number of controversial philosophical assumptions. This does not, however, distinguish the social science of human rights from other branches of social science, such as the politics of democracy or the sociology of inequality. Nevertheless, it requires the social scientist of human rights to be aware of these philosophical controversies.

Sociologists and anthropologists have recently begun to contribute to human-rights studies (Woodiwiss 1998; Wilson 1997c). The impact of the global economy on the protection of human rights has become an increasing subject of study (Evans 1998; 2001). This has been accompanied by an interest in 'the human-rights movement' as a transnational social movement (Risse, Ropp and Sikkink 1999). There are, therefore, signs that the social science of human rights is beginning to wake up.

Beyond human rights law

International law was traditionally concerned with regulating the relations among states with the primary aim of

maintaining international peace. The leading concept of this project was that of *state sovereignty*, which forbade states from interfering with each other's internal affairs. The UN introduced the concept of human rights into international law without altering the concept of sovereignty. This legal framework is, however, subject to intense political pressures, as states and other actors seek to realize their interests and their principles in the international arena. The implementation of human rights by the UN is therefore highly politicized, and this leads to selective attention to human-rights problems, political bargaining and delays. The UN is not a utopian realm above politics, and the political character of human-rights implementation is unavoidable. The politics of human rights is not, however, always harmful to human rights, for governments may raise genuine human-rights issues from political motives, and, when political motives lead to a narrow and selective concern for human rights, appeals are sometimes made to human-rights principles that can be applied more widely.

The implementation of the UN's human-rights principles was seriously delayed and distorted for many years by the politics of the cold war. The UN proclaimed human rights, but did little to implement them. The cost of proclaiming human rights is low, and many governments, in the conditions of the cold war, thought that they had much to lose by respecting the human rights of their sometimes highly discontented citizens. In this context, what is at first sight surprising is the development, albeit slow, of international human-rights law, and of a movement of NGOs to campaign for its implementation. In this situation, the UN stood in an ambiguous position. On the one hand, it was the author and guardian of international human-rights standards; on the other hand, it was an association of governments that were often serious human-rights violators. The UN has, therefore, been the central institution where international human-rights law and politics meet, and often clash, and where the gap between human-rights ideals and realities is especially apparent.

The political character of human rights has philosophical implications. The lawyers who dominate human-rights studies sometimes rely, explicitly or implicitly, on the philosophy of

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legal positivism, which says that human rights are what human-rights law says they are. Human rights are, however, made and interpreted by a political process. The provisions of the Universal Declaration were the subject of intense debates, and the final text was produced by a long series of votes (Morsink 1999a). It is *politically* important that human rights have been codified in international and national law, but it is a mistake to believe that the legalization of human rights takes the concept out of politics.

The legal-positivist approach to human rights not only misrepresents their character, it also has dangerous implications. The *point* of human rights has historically been to criticize legal authorities and laws that violate human rights. Legal positivists sometimes say that the only rights are those that are legally *enforceable*. It may be desirable that human rights should be legally enforceable, but it is not necessary that they should be so. The concept of human rights implies that they are often not. If human rights were legally enforceable, one could, and normally would, appeal to one's *legal* rights, and would not need to appeal to one's human rights. One appeals to human rights precisely when legal institutions fail to recognize and enforce them. If legal positivism were true, an important basis for criticizing unjust legal systems would be eliminated.

The principal philosophical problem of human rights is to show how they can be justified, if they derive neither from law nor from superstitious beliefs. There is a historical reason why there is a problem about the 'source' of human rights. The first version of human-rights theory, presented by John Locke, assumed that God was the source of human rights. Locke could assume agreement with and among his readers that this source provided the ultimate validation of such rights: God was the source both of what exists and of value. The problem faced by the United Nations in proclaiming its Universal Declaration of Human Rights was that, precisely because it claimed that these rights were universal, it could not base them on any particular religious belief. The justificatory basis of human rights had to be *abstracted* from particular religious and ideological beliefs, but the character of that abstraction was not clear. The declaration says little about the source of these rights, apart from some large and

unsubstantiated claims in the preamble that recognition of human rights is ‘the foundation of freedom, justice and peace in the world’, and that disregard for human rights has resulted in ‘barbarous acts which have outraged the conscience of mankind’. These claims may contain important truths, but they do not give a clear account of the source of human rights.

The idea of the ‘source’ of human rights contains an important and confusing ambiguity. It can refer to the *social origins* or the *ethical justification* of human rights. Social scientists have studied the social origins of rights in, for example, popular political protest, and, important though such studies may be for a historical understanding of the discourse of rights, we must be careful not to confuse social origins with ethical justifications, since there are social origins of evil as well as of good. The social-scientific approach to rights, by its preference for avoiding ethical questions, sometimes falls into this confusion. There are, therefore, two distinct questions about the sources of human rights that we need to answer. Why *do* we have human rights? Why *should* we have human rights?

Another set of philosophical questions concerns the relations between human rights and other values. Do human rights occupy the whole space of moral and political theory, or are there other important values? If there are other important values, how are human rights related to them? The Universal Declaration claims that human rights are the foundation of freedom, justice and peace, but does not say how these values are related, conceptually or empirically. It is important to determine as clearly as possible the *limits* as well as the *value* of human rights. It is common to say that human rights establish *minimum standards* of good government. Claiming too much for human rights may make it harder to defend them against their critics, and thereby weaken their appeal and effects. We need to be clear, therefore, whether the concept of human rights supports a *comprehensive* or a *minimum-standards* political philosophy.

There is a huge gap between the fate of Lal Jamilla Mandokhel and the world of the United Nations – a gap that has been filled to a large extent by law and legal studies. These studies are certainly important. But the gap is also filled

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by politics, and by social, cultural and economic forces. These may be more important, although they have been relatively neglected in academic discourse. The aim of this book is to make a contribution to rectifying this neglect.

Conclusion

The study and, to a considerable extent, the practice of human rights have been dominated by lawyers. The cause of human rights owes a great debt to them. There is a danger, however, that excessive attention to human-rights law distorts our understanding of human rights. This book seeks to put law in its place by adopting an interdisciplinary approach. The concept of human rights has a history marked by philosophical controversies. Knowing that history and understanding those controversies illuminate the state of human rights today. In the past half-century, the concept has been incorporated into a large body of international and national law, but it has also been at the heart of political conflicts. The law is important, but understanding human rights requires us to understand its politics. Law and politics do not exhaust the human-rights field. The other social sciences – such as sociology, anthropology and economics – are essential to our appreciation of human-rights problems and their possible solutions. Human rights is an interdisciplinary concept *par excellence*.

We begin this inquiry by tracing, in chapter 2, the historical emergence of human rights. The story continues in chapter 3 by examining its gradual acceptance by the international community. Chapter 4 investigates the principal theoretical justifications of, and debates about, the concept. The distinctive contribution of the social sciences is then surveyed in chapter 5. In chapter 6, much-debated questions about the supposed universality of human rights and its relation to actual human differences are addressed, with particular emphasis on cultural minorities, indigenous peoples and the rights of women. In chapter 7 the place of human rights in national and international politics is analysed and the respective roles of international institutions, governments

and non-governmental organizations evaluated. The political economy of human rights forms the subject of chapter 8, with special attention to development, globalization and international financial institutions. We conclude, in chapter 9, with reflections on the history of human rights, their current status and their likely future. One of the few certainties is that understanding human rights will be essential to understanding the world that we live in for a long time to come.