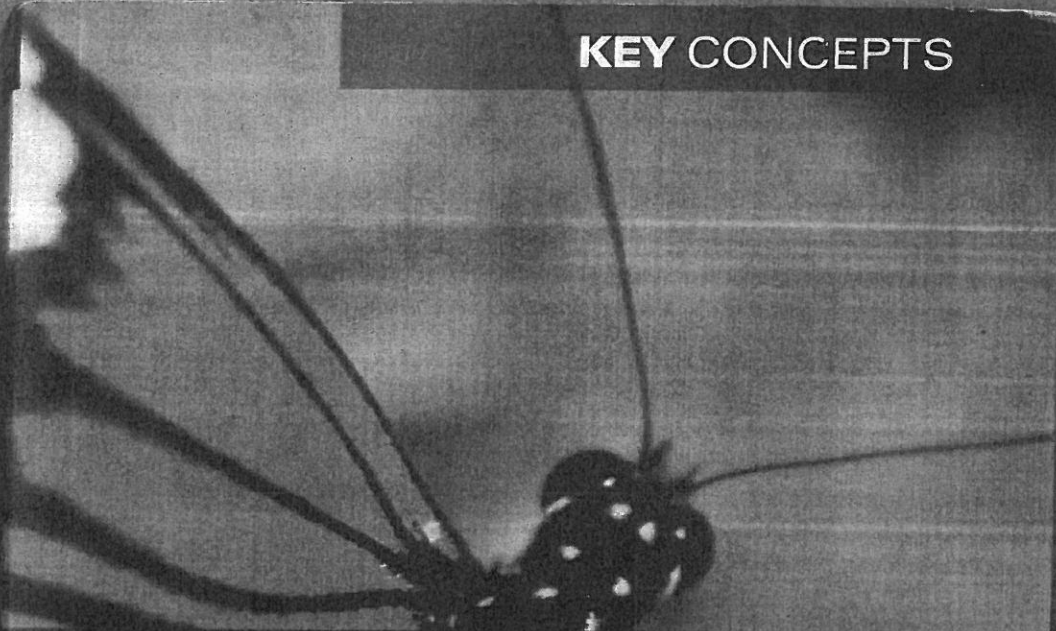
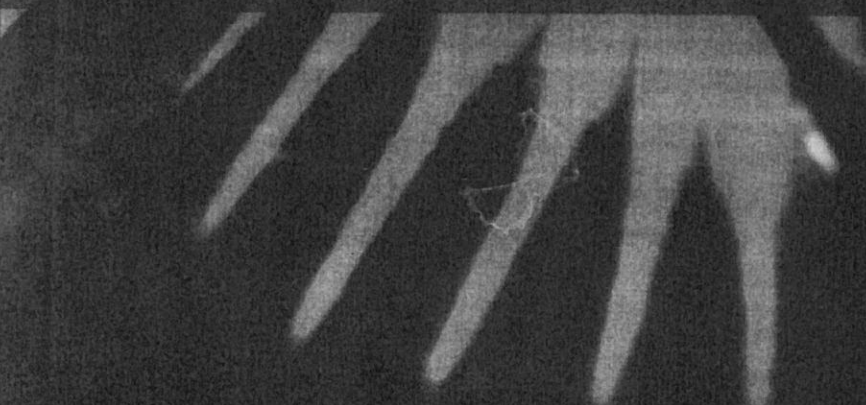




KEY CONCEPTS

HUMAN RIGHTS

MICHAEL FREEMAN



2ND EDITION, FULLY REVISED AND UPDATED

Copyright © Michael Freeman 2011

The right of Michael Freeman to be identified as Author of this Work has been asserted in accordance with the UK Copyright, Designs and Patents Act 1988.

First published in 2011 by Polity Press

Polity Press
65 Bridge Street
Cambridge CB2 1UR, UK

Polity Press
350 Main Street
Malden, MA 02148, USA

All rights reserved. Except for the quotation of short passages for the purpose of criticism and review, no part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

ISBN-13: 978-0-7456-3965-9

ISBN-13: 978-0-7456-3966-6 (pb)

A catalogue record for this book is available from the British Library.

Typeset in 10.5 on 12 pt Sabon
by Toppan Best-set Premedia Limited
Printed and bound in Great Britain by MPG Books Group Limited,
Bodmin, Cornwall

The publisher has used its best endeavours to ensure that the URLs for external websites referred to in this book are correct and active at the time of going to press. However, the publisher has no responsibility for the websites and can make no guarantee that a site will remain live or that the content is or will remain appropriate.

Every effort has been made to trace all copyright holders, but if any have been inadvertently overlooked the publisher will be pleased to include any necessary credits in any subsequent reprint or edition.

For further information on Polity, visit our website:
www.politybooks.com

Con

Preface

Acknoi

1 Intr

2 Ori

3 Aft

4 The

5 The

6 Uni
Cu

7 The

8 Gl
Ecc

9 Hu

Refere

Index

9

Human Rights in the Twenty-first Century

Learning from history

The concept of human rights is now so familiar that we need to remember how new it is. It is true that, according to some scholars, the concept of 'rights' was implicit in ancient cultures: the commandment 'thou shalt not steal', for example, they say, implies the right to property. Other scholars, however, maintain that legal disputes in classical Greece were decided by reference to the common good rather than to the rights of the parties. Miller has nevertheless made a strong case that the concept of *citizens' rights* is found in the political philosophy of Aristotle (Miller, F. 1995). The Stoic philosophers had the concept of universal natural law, but not of natural rights. It was not until the Middle Ages that, within the framework of Christian theology, the concept of universal natural rights could emerge.

There is another way of thinking about the history of the concept of human rights in different cultures. At the core of *our* concept of human rights is the idea of protecting individuals (and perhaps groups) from *the abuse of power*. All human societies have power structures, and many of them have throughout history had some conception of the abuse of power. The concepts of *natural rights* and *human rights*

are particular ways of expressing this concern about the abuse of power.

Some say that the concept of human rights derives from the political struggles and the property interests of the bourgeoisie in seventeenth-century England (Donnelly 1989: 89, 104–5). Recent research has, however, shown that there was lively debate, if little systematic theory, about natural rights among late-medieval Christian philosophers and theologians centuries earlier (Tierney 1997). Medieval debates about rights were concerned with property, but not only with property. The Magna Carta of 1215 provided for the right to a fair trial. Medieval Christian natural-rights theory was concerned with, among other things, the right to *subsistence*. In the sixteenth century Las Casas and Vitoria used a Christian conception of natural rights to condemn Spanish imperialism in America. Medieval debates were conducted in Latin, and in Latin the concept of 'property' refers to what is one's own, and that may include one's life and liberty. We see this late-medieval conception of rights in the political philosophy of Locke, who was the first modern natural-rights thinker, but influenced by medieval conceptions of natural rights. This more complex history of the origins of modern rights theory is relevant to human-rights debates today, because it shows that talk of 'three generations' of rights is unhistorical, and that the distinction between civil and political rights, on the one hand, and economic and social rights, on the other, cannot be derived from the history of the concept, which was concerned first with the right to subsistence and other (economic) property rights, and then with civil and political rights, because these were thought to be necessary to secure the basic rights to survival and property.

The concept of natural rights in the seventeenth and eighteenth centuries was associated with 1) opposition to absolute monarchy; 2) emergent capitalism; and 3) dissident Protestantism or secularized political thought. These themes burst onto the stage of world history in the English Revolution of 1642–49, and the American and French Revolutions of the late eighteenth century.

The violent disorder of the French Revolution provoked a strong *philosophical* reaction that targeted the concept of natural rights as a) subversive, and b) unscientific. The

concept of natural rights derived the natural rights of individuals from the supposed will of God and the belief that *reason* could tell us what was right and wrong. The scientific philosophy of the eighteenth and nineteenth centuries undermined the concept of the natural rights of individuals and replaced it with that of the science of society (sociology). Saint-Simon, Comte, Marx, Weber and Durkheim were the leaders of this development. Rights were no longer fundamental moral ideas to regulate political life, but *ideological* products of social struggle. The social sciences marginalized the concept of rights. When the United Nations, after the Second World War, revived the eighteenth-century concept of the Rights of Man as *human rights* in order to express its liberal-democratic opposition to Fascism, it ignored this social-scientific tradition. Both the concept of human rights and the social sciences have flourished since 1945, but for the most part independently of each other. Recently, the increasing influence of the concept of human rights in international and national politics, especially since the end of the Cold War, has made some social scientists aware of the fact that they have ignored a major social development of the past 50 years. At last, they are applying their distinctive concepts, theories and methods to the real world of human rights and their violation. I have, in this book, offered a review, both sympathetic and critical, of the new social science of human rights in the hope that it will advance the reconciliation of ethical idealism and scientific realism that the academic study of human rights requires.

After the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948, the slow process of standard-setting (international human-rights law) and institution-building began. The Cold War blocked progress for human rights, however, as Communist regimes perpetrated gross violations of civil and political rights, and the West was implicated in massive violations, either directly or through support of anti-Communist dictatorships. Worldwide decolonization brought many new states to the UN. At first anti-colonial elites found the concept of human rights helpful to their cause, but, after independence post-colonial state leaders gave priority to economic development, self-determination and anti-racism, but resisted human-rights

criticism from the West and domestic oppositions. Many post-colonial states had terrible records in the violation of civil and political rights, and few were successful in protecting economic and social rights. Nevertheless, the international campaign against apartheid in South Africa established the principle that human-rights violations within one nation-state were properly the object of condemnation and sanctions by the international community.

The progress of human rights since 1948 has a number of significant landmarks: the foundation of Amnesty International (1961); the two UN covenants of 1966; the Helsinki Accord of 1975; the human-rights foreign policy of President Jimmy Carter in the 1970s; the democratization of various Latin American and European countries from the mid-1980s; the Vienna Conference 1993. The end of the Cold War at the end of the 1980s produced contradictory results: liberalization in many former Communist societies, but violent ethno-nationalist conflict in many others. By the end of the twentieth century the concept of human rights had become a 'hegemonic ideology'; there had been a tremendous expansion of human-rights law and institutions; there had been great real advances in many countries; and there were many unsolved political problems in the world that still gave rise to grave human-rights violations. Only six years before the century ended, more than half a million citizens of Rwanda were murdered by their government in a state-sponsored genocide. The battle for human rights was far from won.

Human rights may seem like an idea whose time has come, but this proposition must be treated with caution. We should not accept the extreme Idealist view that the concept of human rights is very powerful in international politics: states still resist human-rights pressures from within and outside their societies when they think that their interests are threatened. We should not, however, take the extreme Realist view that the concept makes no significant difference to international politics. Communist human-rights violations may have been brought to an end because the West won the Cold War, but the concept of human rights played a role in that war. The social sciences can clarify the respective roles of ideas and material interests in the politics of human rights,

although isolating causal connections in international politics is difficult, and there is still much we do not know about the 'power' of human rights.

Some critics believe that the concept of human rights is too *individualistic* and *legalistic*, so that the *structural* causes of human-rights violations, especially of economic and social rights, are ignored. This view almost certainly underestimates the achievements of the human-rights movement based on human-rights law. The structural approach is nevertheless useful in emphasizing the role played by inequalities of political power and the dynamics of the global economy in the causation of human-rights violations. It is limited by the difficulty of identifying alternative structures that would better protect human rights and are attainable. States, international institutions and transnational corporations are the principal players in international politics. NGOs have played an increasingly important role, but their resources and power are relatively weak. The UN is seriously under-funded. Its weakness can be explained by *the principle of limited sacrifice*. We are human and decent, and so we say that everyone ought to enjoy their human rights. However, human-rights declarations are cheap, whereas human-rights implementation is rather expensive. We are unwilling to pay the bill. We are disappointed by the gap between human-rights ideals and human-rights realities, but we are unwilling to recognize our fault in creating that gap, and find it easier to blame economic structures or supposedly ineffective institutions such as the UN. The weakness of the structural approach is that it fails to locate sources of possible change. The strength of the activist approach is that it emphasizes that we are responsible for the structures that we support. Human-rights activists have, however, begun to tackle the structural sources of human-rights violations, and so the idealist and structuralist approaches may be converging.

The history of the concept of human rights supports the contemporary thesis that human rights are 'indivisible' in that basic human material interests are closely connected with political freedom. This history shows, too, that the concept reaches for the fundamental conditions of human well-being while evolving in response to changing social conditions. The social constructivist theory of human rights

advocated by Donnelly emphasizes the changing nature of human rights (Donnelly 1985a: 87). The social sciences can explain these changes, although their achievements in doing so have so far been disappointing. Social constructivism, however, gives us no standard for *evaluating* these changes. The legacy of the history of the concept of human rights is confusion about how ethical, analytical and explanatory approaches are related to each other. Historically, social science attempted but failed to replace the ethical approach to human rights. Reconciling the ethics and social science of human rights is a principal challenge of the future.

Objections to human rights

The history of human rights teaches us not only *that* the concept of human rights is controversial, but also rather precisely *why* it is. The principal criticisms that were made in the late eighteenth and early nineteenth centuries of the Rights of Man still bite today. Burke said that the concept ignored the value of national traditions. Bentham argued that it ignored the social nature of moral and legal concepts. Marx complained that it concealed and legitimated exploitative and oppressive social structures. Such arguments are still made today. There is a danger that the success of the concept can induce complacency and dogmatism. In the face of relativist objections to human-rights universalism for being 'imperialistic', human-rights advocates would do well to recall the origin of the concept in the revulsion against Nazism. They would do well to remember the victims of genocide in Cambodia and Rwanda. It is reasonable and salutary to subject the concept of human rights to philosophical and practical criticism. The contemporary appeal and influence of the concept provide reasons to subject it to critical scrutiny. The rhetoric of human rights is universal; the scope of human rights is not: there is a human right to food, but millions starve. In this book I have tried to show both the moral power of the concept, and the difficult theoretical and practical problems that it raises.

Be

We
scie
et a
are
pre
199mit
ver

con

nes

yea

mu

tior

woi

woi

nee

beg

clin

Thi

that

rad

inte

be e

thre

T

mor

eigh

with

ing

sizes

hum

but

The

right

insti

hum

certa

Beyond human-rights law

We cannot know the future of human rights, but the social sciences can throw some light on the darkness ahead. Risse et al., for example, have argued that human-rights advances are brought about by a combination of external and internal pressures on rights-violating states (Risse, Ropp and Sikkink 1999). The Vienna Conference of 1993 reinforced the commitment of the international community in principle to universal human rights. Most governments are formally committed to human rights, and the number and effectiveness of human-rights NGOs have greatly increased in recent years. Unashamed human-rights violating states are now much rarer than they were 20 years ago. Yet serious violations continue, especially against vulnerable groups such as women, children, indigenous peoples, minorities, migrant workers and asylum seekers. Here the limits of law and the need for social science are clear. Human-rights scholars have begun to recognize that the global economy and the global climate may have massive implications for human rights. This takes us beyond law to a number of technical disciplines that have until recently not appeared on the human-rights radar. The state-individual model of human rights, which international human-rights law inherited from Locke, must be expanded to tackle the contemporary and probable future threats to human rights.

The socialist critique of capitalism has been replaced by a more diffuse concern with 'globalization'. We saw in chapter eight that the concept of human rights has a complex relation with globalization, for it claims global validity while criticizing several powerful global institutions. Donnelly emphasizes the persistence of state sovereignty as a barrier to human-rights advance (Donnelly 1998: 152–3). This is true, but not the whole truth in at least two important respects. The first is that states are not the only abusers of human rights: transnational corporations and international financial institutions that are partly independent of states can be human-rights violators. The second is that states do what certain human agents decide that they should do, and the

relation between sovereignty and human rights can be changed in the future, as it has been changed in the past.

State sovereignty obstructs the implementation of human rights partly because state leaders have an interest in violating human rights, and partly because ordinary people have a limited willingness to make sacrifices to defend the human rights of others. However, even if we can summon the will to defend human rights, it may be very difficult to do so. In 1994 the international community stood by while genocide was committed in Rwanda. In response, the doctrine of the 'responsibility to protect' was developed to affirm that sovereignty entailed the obligation to protect human rights and that if a state failed to fulfil this responsibility the international community might intervene. In 1999 NATO intervened by bombing Serbia to halt the ethnic cleansing of Albanians from Kosovo without the authority of the UN Security Council, and thus apparently illegally. After 9/11, 2001, the USA led an international intervention in Afghanistan to topple the government of the Taliban and then, in 2003, an invasion of Iraq. All these interventions removed rights-violating regimes; all killed innocent civilians; all left human rights changed but facing an uncertain future. The international community expressed concern about gross human-rights violations in Darfur, Sudan – some even calling them 'genocide' – but 'intervened' only with inadequate humanitarian aid and peace-keeping operations. The 'responsibility to protect' was failing to protect millions whose human rights were being flagrantly violated. The legal conception of human rights is inadequate for understanding this political complexity. It helps to identify the problem, but says rather little about the solution.

There is much talk in academic and political circles about the need for 'early warning' of human-rights disasters. This raises another difficult problem. We now have fairly good social-scientific knowledge about the early-warning signs of human-rights disasters. Relatively small-scale but persistent and systematic human-rights violations are often the precursors of much greater ones. The Nazi genocide of the Jews was preceded by several years of *relatively* minor human-rights violations, such as discrimination in employment. Although effective human-rights pressure from governments

an
bo
of
int
sug
be
tior
right
but
dile

Cor

Since
prese
as a
rights
unde
rights
gener
regim
protec
racy.
'demic
though
for th
pany,
rights.
govern
that ha
social
cially v
has lec
also dis
process
to hum
tion fro
from in
or no

and NGOs, and skilful conflict-resolution diplomacy, may both improve the human-rights situation and reduce the risk of disaster, this may leave a difficult question of *when* to intervene. The problem is that the concept of 'early warning' suggests early intervention, but early intervention may easily be disproportionate and counter-productive. The international human-rights movement may help to prevent human-rights violations from becoming human-rights catastrophes, but the concept of 'early warning' does not resolve all the dilemmas of intervention.

Concluding remarks

Since the end of the Cold War, Western policy-makers have presented human rights, democracy and market economies as a package. The relations between markets and human rights are, however, complex, problematic and not fully understood. The relations between democracy and human rights are also problematic, because, although democracies generally respect human rights better than authoritarian regimes do, democracies can violate human rights, and the protection of human rights may require limitations on democracy. In practice, the Western powers have interpreted 'democracy' to mean free and fair elections, and, desirable though these are, they are not only not sufficient conditions for the protection of human rights, but sometimes accompany, and perhaps even cause, the deterioration of human rights. In many recent cases, this has been because elected governments have pursued market-based economic policies that have not only worsened the protection of economic and social rights for the most vulnerable sections of society (especially women and children), but also provoked disorder that has led to restrictions on civil and political rights. We must also distinguish between *democracy* and *democratization*, the process of political change that has a problematic relation to human rights for somewhat different reasons. The transition from authoritarianism to democracy may be a change from imposed order to regulated conflict. Where there is little or no tradition of democratic politics, and also economic

hardship and/or ethnic divisions, the restraints that democracy places on conflict may break down. The results may resemble the human-rights catastrophes of Rwanda or Yugoslavia, in both of which countries the processes of democratization were involved in the ensuing human-rights tragedies.

The twenty-first century began with the future of human rights uncertain. Great advances have been made since 1945 not only in 'standard-setting' (international and national laws) and 'institution-building' (human-rights commissions, committees, courts etc.), but also in freedom and well-being for many people in many countries. There are still many countries in which civil and political rights are trampled on. Progress towards the recognition of economic and social rights has been slow, and largely rhetorical. Worse, neo-liberal economic policies reduced the protection of these rights for millions of people around the world who enjoy them least, although there has been some recognition (again, perhaps more rhetorical than practical) that liberal economics should be accompanied by 'safety nets' for the most vulnerable.

Human-rights academics tend to devote excessive attention to the UN system of commissions and committees. These may be important, but they are certainly not the only important institutions that affect human rights in the world, and they are probably not the most important. The concept of human rights is centrally concerned with the misuse of *power*. The social-scientific study of human rights should give priority to the primary centres of power and to the possible sources of resistance. This entails that human-rights studies should attend more to the G8, the G20, IFIs, the WTO and the foreign policy of the USA. The study of human rights should be integrated with political economy, development economics, conflict studies and the politics of democratic transition. The political theory of human rights has, since Locke, accorded to the rule of law a central place in the protection of human rights. This is correct. Nevertheless, both the theory and practice of human rights have suffered from being excessively legalistic. The kind of economics practised by Amartya Sen and the kind of applied moral philosophy developed by Martha Nussbaum may have more to contribute to the advance of human-rights knowledge

th.
an

be
Th
glc
po
im
an
ag
str
po
pri
ma
co
na
rig
NC
lea
bet
roc
ten
bet
ha
the
me
anc
on
the
the
An
unc
cor
rea
hui
pro
arc
anc
a c
hoj
hui

than refined legal analysis of human-rights texts (Nussbaum and Sen 1993).

Donnelly has said that the struggle for human rights will be won or lost at the national level (Donnelly 1994: 117). This is only a partial truth. It is true that, notwithstanding globalization, the nation-state is still an important field of power. It is also true that for many people the single most important power that affects their human rights is their state and its institutions, especially its legal and law-enforcement agencies. It is also true, however, that for many others the structures and processes of the global economy and of global politics are more important. We should recall that many private corporations are richer and more powerful than many states. Risse and his colleagues rightly argue that a complex and finely judged mix of states and NGOs, of internal and external actors, provides the best hope for human rights in the coming years. We have seen that human-rights NGOs have increased greatly in number in recent years, not least in poor countries. Important distinctions are emerging between *international* NGOs, *national* NGOs and *grass-roots* or *community-based* NGOs. Observers have noted tensions among these different types of NGO, especially between those from the rich North and the poor South. I have suggested that these tensions may be healthy because they entail *the democratization of the human-rights movement*, that is, the bridging of the gap between the discourse and practices of UN diplomats and human-rights lawyers, on the one hand, and, on the other, the ordinary people of the world, to protect whose dignity, freedom and well-being the Universal Declaration of Human Rights was adopted. Anthropology may have a special contribution to make to understanding this aspect of human rights, for it can link the concept of human rights to the cultural understandings of real people in real situations. In addition, a kind of applied human-rights anthropology is being carried out by various projects of human-rights education, formal and informal, around the world (Andreopoulos and Claude 1997; Mihr and Schmitz 2007). The social sciences have, after too long a delay, begun to take human rights seriously. We should hope that this welcome development will be accompanied by human-rights activists taking social science seriously.

